

## The Consolidate Patents Act

Publication of the Patents Act, cf. Consolidated Act No. 926 of 22 September 2000, including the amendments which follow from Section 1 in Act No. 1258 of 20 December 2000<sup>1)</sup>

### Part I

#### General provisions

##### Section 1

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

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

- (i) discoveries, scientific theories and mathematical methods,
- (ii) artistic creations,
- (iii) plans, rules or methods for intellectual activity, for games or for business activity or computer programs,
- (iv) presentation of information.

(3) Methods for surgical or therapeutic treatment or for diagnosis, practised on human beings or animals, shall not be regarded as inventions, either. This provision shall not prevent the grant of patents for products, including substances and compounds, for use in any of such methods.

(4) Patents shall not be granted in respect of plant and animal varieties. Patents may, however, be granted for inventions, the subject matter of which is plants or animals if the technical fea-

sibility of the invention is not confined to a particular plant or animal variety. In this act, a plant variety means a plant variety as defined in Article 5 of Council Regulation (EC) No. 2100/94 on Community plant variety rights.

(5) Patents shall not be granted in respect of essentially biological processes for the production of plants or animals. In this Act, essentially biological processes mean processes, which consist entirely of natural phenomena such as crossing or selection. Patents may, however, be granted for microbiological processes or other technical processes or a product produced by means of such processes. In this Act, a microbiological process means any process, which exploits a microbiological material, is performed on a microbiological material or results in a microbiological material.

(6) Inventions may be patentable, even if they concern a product consisting of or containing biological material or a process by means of which biological material is produced, processed or used. Biological material, which is isolated from its natural environment or produced by means of a technical process may be the subject of an invention even if it previously occurred in nature. In this Act, biological material means material containing genetic information and capable of reproducing itself or being reproduced in a biological system.

##### Section 1a

(1) The human body, at the various stages of

its formation and development, and the simple discovery of one of its elements, including a sequence or partial sequence of a gene, cannot constitute patentable inventions.

(2) Notwithstanding subsection 1 hereof, an element isolated from the human body or otherwise produced by means of a technical process, including a sequence or partial sequence of a gene, may constitute a patentable invention, even if the structure of that element is identical to that of a natural element.

### Section 1b

(1) Patents shall not be granted in respect of inventions the commercial exploitation of which would be contrary to ordre public or morality.

(2) An exploitation shall not be deemed to be contrary to ordre public or morality merely because the exploitation is prohibited by law or administrative regulation.

(3) Pursuant to (1) patents may, however, not be granted for, among other things

- (i) processes for cloning human beings,
- (ii) processes for modifying the germ line genetic identity of human beings,
- (iii) uses of human embryos for industrial or commercial purposes, and
- (iv) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes.

### Section 2

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

(2) The state of the art shall be held to comprise everything made available to the public by means of a written description, lecture, exploitation or in any other way. The contents of patent applications filed in this country before the said date of filing shall also be regarded as comprised in the state of the art, if such applications are made available to the public in accordance with the rules in section 22 of this Act. The same shall apply to the contents of applications for registration of utility models filed in this country before the said date of filing, if such applications are

made available to the public in accordance with the rules relating to utility models. The requirements in subsection 1 hereof to the effect that the invention shall differ essentially from the state of the art shall, however, not apply in relation to the contents of such applications.

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

(4) The requirement under subsection 2 hereof that inventions be new shall not prevent the grant of patents for known substances or compounds for use in the methods referred to in section 2 (3) of this Act, provided that the use of such substance or compound is not known for any of those methods.

(5) Patents may, however, be granted for inventions irrespective of the fact that they have been made available to the public with the last 6 months prior to the filing of the application, if this is a consequence of

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

### Section 3

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

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

subject-matter of the patent or by importing or possessing the product for these purposes.

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

(3) The exclusive right shall not extend to:

- (i) acts done for non-commercial purposes,
- (ii) acts concerning products put on the market in this country or in another country within the European Economic Area (EEA) by the proprietor of the patent or with his consent,
- (iii) acts done for experimental purposes relating to the subject-matter of the patented invention, or
- (iv) preparation in a pharmacy of a medicinal product according to a prescription in individual cases or acts concerning the medicinal product so prepared.

#### Section 3a

(1) The protection conferred by a patent on a biological material possessing specific characteristics as a result of the invention shall extend to any biological material derived from that biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.

(2) The protection conferred by a patent on a process that enables a biological material to be produced possessing specific characteristics as a result of the invention shall extend to biological material directly obtained through that process and to any biological material through propaga-

tion or multiplication in an identical or divergent form and possessing those same characteristics.

(3) The protection conferred by a patent on a product containing or consisting of genetic information shall extend to all material in which the product is incorporated and in which the genetic information is contained and performs its function, cf., however, Section 1a.

(4) The protection referred to in (1), (2) and (3) shall not extend to biological material obtained from the propagation or multiplication of biological material placed on the market in the territory of a Member State by the proprietor of the patent or with his consent, where the multiplication or propagation necessarily results from the application for which the biological material was marketed, provided that the material obtained is not subsequently used for other multiplication or propagation.

#### Section 3b

(1) Notwithstanding the provisions in Section 3a, /1-3), the sale or other form of commercialisation of plant propagating material to a farmer by the proprietor of the patent or with his consent for agricultural use implies authorisation for the farmer to use the product of his harvest for propagation or multiplication by him on his own farm, the extent and conditions of this derogation corresponding to those under Article 14 of Regulation (EC) No. 2100/94 on Community plant variety rights.

(2) Notwithstanding the provisions in Section 3a, /1-3), the sale or any other form of commercialisation of breeding stock or other animal reproductive material to a farmer by the proprietor of the patent or with his consent implies authorisation for the farmer to use the animal or other animal reproductive material for the purpose of pursuing his agricultural activity but not to sell it within the framework or for the purpose of a commercial reproduction activity. The Minister for Business and Industry shall lay down provisions concerning the extent and conditions of the farmer's exploitation of such patents for the purposes of pursuing his agricultural activity.

#### Section 4

(1) Any person who, at the time when the patent application was filed, was exploiting the invention commercially in this country may, not-

withstanding the grant of a patent, continue such exploitation retaining its general character, provided that the exploitation did not constitute an evident abuse in relation to the applicant or his legal predecessor. Such a right of exploitation shall also, under similar conditions, be enjoyed by any person who had made substantial preparations for commercial exploitation of the invention in this country.

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

#### Section 5

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

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

#### Section 6

(1) Application for a patent of an invention which no earlier than 12 months prior to the date of application has been stated in an application relating to patent or utility model registration in this country or patent, inventor's certificate or utility model protection in another country which has joined the Paris Convention of 20<sup>th</sup> March 1883 concerning the protection of industrial ownership shall in relation to sections 2(1), 2(2) and 2(4) together with section 4 of this Order on request be seen as being filed at the same time as the earlier application. The same right of priority shall apply even if the application for protection does not originate from a country which has joined the convention when an identical priority from a Danish patent application or utility model application pursuant to bilateral or multilateral agreement is allowed in the country in which the earlier application was filed and this is on conditions and with effects which substantially comply with the convention.

(2) The Minister for Business and industry shall lay down the particulars of the right to claim such priority.

### Part 2

#### *Patent applications and examination and other processing thereof etc,*

#### Section 7

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

(2) The Patent Board of Appeal shall be established by the Minister for Business and Industry for the examination of appeals from decision of the Patent and Trade Mark Office, cf. sections 25 and 67 of this Act, and appeals from decisions pursuant to the Danish Designs Act, the Danish Trade Marks Act, etc. The Patent Board of Appeal shall consist of not more than 18 members who shall be appointed for a term of 5 years. 2 of the members, one of whom shall be the chairman, shall possess the general qualifications for appointment to the office of High Court judge whereas the other members together shall possess the best possible expert knowledge of patents, designs, trade marks and matters placed under the authority of the Patent Board of Appeal by other legislation. They shall be graduates from the Technical University of Denmark (Danmarks Tekniske Højskole), another institution of higher education or have acquired the necessary expert knowledge in another way.

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

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

#### Section 8

(1) An application for a patent shall be filed



with the Patent Authority or, in the cases referred to in Part 3 of this Act, with the patent authority of a foreign state or with an international organisation.

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

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

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

(5) The applicant shall pay the prescribed application fee. For the patent application the prescribed renewal fee in respect of each fee year beginning before the application is finally decided upon shall also be paid. The fee year shall comprise 1 year and shall the first time be reckoned from the date of filing of the application and thereafter from the corresponding day of the calendar year.

#### Section 8 a

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

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

#### Section 9

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

#### Section 10

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

#### Section 11

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

#### Section 12<sup>2)</sup>

The Patent and Trade Mark Office may invite the applicant to appoint an agent residing in The European Economic Area (EEA) to represent him in all matters relating to the application. The name and address of the agent shall be entered in the Register of Patents.

#### Section 13

An application for a patent may not be amended in such a way that protection is claimed for subject-matter which was not disclosed in the application at the time when it was filed.

## Section 14

(Repealed)

## Section 15

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

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

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

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

## Section 16

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

## Section 17

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

deciding on the patent application. Information to that effect shall be given in the invitation.

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

## Section 18

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

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

## Section 19

(1) If the application complies with the requirements, and no objections have been found to the grant of a patent, and it has been established that the applicant approves the text on the basis of which patent may be granted, the Patent Authority shall notify the applicant to the effect that patent may be granted against payment of the prescribed fee for publication of the patent specifications.

(2) After the Patent Authority has submitted notification as mentioned in subsection 1 the patent claims shall not be amended in such a manner that the scope of the patent protection is extended.

(3) The fee for publication of the patent specifications shall be paid within 2 months after the Patent Authority has forwarded a notification under subsection 1 hereof. Failure to do so shall cause the application to be shelved. However, proceedings will be resumed, if the applicant pays the patent grant fee and the prescribed resumption fee within 4 months after expiry of the time limit.

## Section 20

(1) When the requirements in section 19 of this Act have been complied with, the Patent Authority shall grant the patent and issue letters patent. The grant of patent shall be advertised at the same time.

(2) Patent specifications including description,

claims and abstract shall be obtainable from the Patent Authority at the same time as the grant of patent is advertised. The patent specifications shall state the proprietor of the patent and the inventor.

### Section 21

(1) Any person shall be entitled to file an opposition with the patent Authority against a patent, which has been granted. The opposition shall state the grounds on which the opposition is filed and shall be submitted to the Patent Authority within 9 months from advertisement of the grant of patent. The opposition shall be accompanied by the prescribed fee.

(2) An opposition shall only be filed on the grounds that the patent has been granted irrespective of the fact that

- (i) the requirements of Sections 1 and 2 of this Act are not complied with,
- (ii) it relates to an invention which has not been described in a sufficiently clear manner as to enable a person skilled in the art to carry out the invention on the basis of the description, or
- (iii) the subject-matter extends beyond the contents of the application filed.

(3) The Patent Authority shall advertise the filing of an opposition.

### Section 22

(1) As from the date on which patent is granted, the files of the application shall be available to the public.

(2) When 18 months have elapsed from the date of filing or, if priority has been claimed under section 6 of this Act, from the date on which priority is claimed, the files shall be available to the public, even if patent has not been granted. If a decision has been made to shelve or to refuse the application, the files shall, however, not be available unless the applicant requests resumption of the proceedings, appeals against the refusal or requests re-establishment of rights under sections 72 or 73 of this Act.

(3) At the request of the applicant, the files shall be made available earlier than prescribed in subsections 1 and 2 hereof.

(4) When the files are made available under subsection 2 or 3 hereof, a notice to that effect shall be published.

(5) If a document contains business secrets which do not relate to an invention for which patent is applied or has been granted, the Patent Authority may, on request, when circumstances make it desirable, decide that the document shall not be available or only available in part. If such a request has been filed, the document shall not be made available until a decision has been made or during the period within which the decision may be appealed against. An appeal shall have suspensive effect.

(6) If a sample of biological material has been deposited under section 8 a of this Act, any person shall have the right to obtain a sample when the files become available under subsections 1, 2 or 3 hereof. After the patent has been granted, and notwithstanding revocation or cancellation of the patent, furnishing may be made to anyone requesting it. This does not imply, however, that any sample shall be furnished to any person who, according to the rules laid down in or pursuant to law, is not allowed to handle the deposited material. Nor shall any sample be furnished to any person if, due to the dangerous properties of the material, his handling of the sample is supposed to involve obvious danger.

(7) Notwithstanding subsection 6 hereof, the applicant may request that, until a patent has been granted, the furnishing of a sample shall only be effected to an expert in the art. If an application is refused, withdrawn or deemed to be withdrawn, the applicant may request that a sample of the deposited material shall only be furnished to an expert in the art for 20 years from the date on which the patent application was filed. The Minister for Business and Industry shall lay down provisions for the submission of a request for furnishing, for the time limit for presenting such requests and prescribing who may be used as an expert.

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

### Section 23

(1) If an opposition has been filed, the proprietor of the patent shall be notified accordingly

and be given an opportunity to file his observations on the opposition.

(2) The Patent Authority may examine an opposition even though the patent has terminated or will terminate under sections 51, 54 or 96 of this Act, even if the opposition is withdrawn, or even if the opponent dies or loses his capacity to enter into legal transactions.

(3) The Patent Authority may revoke a patent or maintain it unamended or amended. If the Patent Authority finds that the patent may be maintained as amended, and it has been established that the proprietor of the patent consents to this, the patent specifications shall be amended accordingly after the proprietor of the patent has paid the prescribed fee for publication hereof. Copies of the amended patent specifications shall be obtainable from the Patent Authority.

(4) If the proprietor of the patent does not approve the maintenance of the patent as amended or does not pay the fee for publication of new patent specifications in time, the patent shall be revoked.

(5) The Patent Authority shall advertise its decision on the opposition.

#### Section 24

(1) An appeal from the final decision of the Patent Office concerning a patent application may be filed by the applicant with the Patent Board of Appeal. The proprietor of the patent may file an appeal with the Patent Board of Appeal, if a patent has been revoked, or if the Patent Office finds that the patent may be maintained as amended following an opposition. The opponent may file an appeal with the Patent Board of Appeal, if a patent is maintained unamended, or if the Patent Office finds that the patent may be maintained as amended despite a duly filed opposition. If the opponent withdraws his appeal, such appeal may nevertheless be examined when circumstances make it desirable.

(2) Decisions refusing a request for resumption under section 15 (3), or section 19 (3) of this Act or complying with a request for transfer under section 18 of this Act may be appealed against by the applicant. Decisions rejecting a request for the transfer of the application may be appealed against by the person making the request.

(3) Decisions refusing a request under section 22 (5) of this Act may be appealed against by the person making the request.

#### Section 25

(1) Appeals under section 24 of this Act shall be filed with the Patent Board of Appeal not later than 2 months after the date on which the party concerned was notified of the decision by the Patent Office. The prescribed fee shall be paid within the same time limit. Failure to do so shall cause the appeal to be refused.

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

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

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

#### Section 26

If an application which is available to the Public is finally refused or shelved, notice hereof shall be published.

#### Section 27

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

### Part 3

#### *International patent applications*

#### Section 28

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

(2) An international patent application shall be filed with a patent authority or an international

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

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

#### Section 29

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

#### Section 30

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

#### Section 31

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

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

(3) If the applicant has paid the prescribed fee within the time limits fixed in subsections 1 and

2 hereof, the prescribed translation or copy may be filed within a further period of 2 months provided that a prescribed additional fee is paid prior to expiry of the further period.

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

#### Section 32

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

#### Section 33

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

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

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

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

(5) If the application complies with the re-



quirements relating to form and contents provided for in the Treaty, it shall be accepted in that respect.

#### Section 34

Patent shall only be granted or refused in respect of an international patent application after expiry of the time limit laid down by the Minister for Business and Industry, unless the applicant has consented to the application being decided upon prior thereto.

#### Section 35

Without the consent of the applicant, the Patent Authority shall not grant a patent for an international patent application or publish it prior to its publication by the International Bureau of the World Intellectual Property Organization (WIPO) or prior to the expiry of 20 months from the international filing date or, if priority is claimed, from the date of priority.

#### Section 36

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

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

(3) If the appeal is dismissed, the time limit for payment of the fee under subsection 1, 2<sup>nd</sup> clause, hereof shall be calculated from the date on which the final decision is given.

#### Section 37

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

#### Section 38

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

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

(3) If the Patent Authority finds that the decision of the receiving Office or the International Bureau was not justified, the Patent Authority shall examine and process the application under Part 2 of this Act. If no international filing date has been accorded by the receiving Office, the application shall be deemed to have been filed on the date which in the opinion of the Patent Authority should have been accorded as the international filing date. If the application complies with the requirements relating to form and contents provided for in the Treaty, it shall be accepted in that respect.

(4) The provision of section 2 (2), 2<sup>nd</sup> clause, of this Act shall apply to applications to be examined and processed pursuant to subsection 3 hereof, provided that the application is made

available to the public under section 22 of this Act.

#### **Part 4**

##### *Extent of the protection and term of the patent*

#### **Section 39**

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

#### *Section 40*

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

#### **Part 5**

##### *Payment of renewal fee*

#### **Section 41**

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

(2) For a later application as provided for in section 11 of this Act, the renewal fee in respect of fee years having begun before the date of filing of the later application or beginning within 2 months after that date shall in no case fall due before 2 months have elapsed after the said date. For an international patent application, renewal fee, in respect of fee years having begun before the date on which the application was proceeded with under section 31 of this Act or taken up for examination and other processing under section 38 of this Act or beginning within 2 months after that date shall in no case fall due before 2 months have elapsed after the date on which the application was proceeded with or taken up for examination and other processing.

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

(4) The Danish Patent and Trademark Office

shall collect renewal fees from the applicant or the proprietor of the patent or an appointed agent, if any, but the Danish Patent and Trademark office shall not be held responsible for loss of rights as a consequence of failure to collect.

#### **Section 42**

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

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

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

#### **Part 6**

##### *Licensing, transfer, etc.*

#### **Section 43**

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

#### **Section 44**

(1) The transfer of a patent, the grant of a license, pledging or execution proceedings levied on the patent or the commencement of insolvency proceedings against the proprietor shall, on request, be recorded in the Register of Patents.

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

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

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

#### Section 45

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

(2) The Minister for Business and Industry may direct that for the purposes of subsection 1 hereof working of the invention in another country shall be equivalent to working in this country. Such a provision may be made subject to reciprocity.

#### Section 46

(1) The proprietor of a patent for an invention, the use of which is dependent on a patent or a registered utility model which belongs to another person may obtain compulsory license for use of the protected invention of the latter patent or the protected model on utility model registration if the former invention makes up an essential technical progress of substantial economic importance.

(2) The proprietor of the patent of the invention or of the registered utility model for which use compulsory license has been granted pursuant to the provision in (1) shall on reasonable terms be able to obtain compulsory license for use of the other invention.

#### Section 46 a

(1) An owner of a variety who cannot obtain or exploit a plant variety right without infringing a prior patent may apply for a compulsory license for use of the invention, where the compulsory license for the exploitation of the plant variety to be protected, against payment of an appropriate royalty. Compulsory license will only be granted provided that the owner of the variety proves that

the variety constitutes essential technical progress of substantial economic importance in relation to the invention.

(2) Where, under the Danish Plant Variety Protection Act, a proprietor of a patent has obtained a compulsory license to exploit a protected plant variety, the owner of the plant variety has the right, on reasonable terms, to obtain cross-license for use of the invention.

#### Section 47

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

#### Section 48

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

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

(3) The Minister for Business and Industry may direct that for the purposes of subsection 1 hereof exploitation of the invention in another country shall be equivalent to exploitation in this country. Such a provision may be made subject to reciprocity.

#### Section 49

(1) Compulsory license shall only be granted to persons who by agreement have not been able to obtain license on reasonable terms and who may be regarded as being able to make use of the invention in a reasonable and proper manner and in compliance with the license.

(2) A compulsory license shall not prevent the proprietor of the patent from exploiting the invention himself or from granting licenses to others.

(3) Compulsory license can only be trans-

ferred to others together with the establishment in which it is used or in which the utilisation was intended. For compulsory license filed in accordance with Section 46(1) it shall moreover be applicable that transfer of compulsory license shall take place together with the patent the use of which is dependent on a patent or a registered utility model which belongs to another person.

(4) Compulsory license concerning semiconductor technology can only be filed for public, non-commercial use or for terminating an anti-competitive practice, which has been established by decree or administrative decision.

### Section 50

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

### Part 7

#### *Termination of patent, administrative re-examination, etc.*

### Section 51

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

### Section 52

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

- (i) it has been granted notwithstanding that the requirements under Sections 1 and 2 of this Act are not complied with
- (ii) it relates to an invention which is not disclosed in a manner sufficiently clear to enable a person skilled in the art to carry out the invention,
- (iii) its subject-matter extends beyond the contents of the application as filed, or
- (iv) the protection conferred by the patent has

been extended after the Patent Authority has notified the applicant that patent will be granted.

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

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

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

### Section 53

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

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

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

### Section 53 a<sup>3)</sup>

Proceedings instituted as to revocation while an opposition pursuant to Section 21 remains to

be conclusively considered by the Patent Authority may be suspended by the court until a final decision has been made by the Patent Authority.«

#### Section 53 b<sup>4)</sup>

(1) Any person may file a request with the Patent Authority to the effect that a patent granted by the Patent Authority or granted with effect for Denmark pursuant to Section 75 be re-examined.

(2) A request pursuant to subsection 1 may not be filed during the period allowed for opposition, or as long as an opposition remains to be finally decided upon. Where proceedings before the court as to a patent remain to be finally decided upon, a request pursuant to subsection 1 may not be filed as to the patent in question.

(3) Where proceedings as to a patent are brought before the court prior to a final decision on a request pursuant to subsection 1 relating to the same patent, the Patent Authority shall temporarily shelve the consideration of the request pending the conclusive settlement of the proceedings, unless the request has been filed by the patent holder.

(4) Where a request for re-examination has been filed, the patent holder shall be notified thereof and be invited to file his observations. The Patent Authority shall advertise the filing of a request for re-examination.

(5) The Patent Authority may consider a request for re-examination, even where the patent has terminated or will terminate pursuant to Sections 51, 54, or 96. The Patent Authority may also consider the request, even where the request is withdrawn, or the person having requested the re-examination dies or loses his capacity to enter into legal transactions.

(6) The request as to administrative re-examination shall pursuant to subsection 1 be accompanied by the prescribed fee.«

#### Section 53 c

(1) A request for re-examination by persons other than the proprietor of the patent shall only be filed on the grounds for revocation referred to in section 52 (1) of this Act.

(2) The Patent Authority may revoke the patent or maintain the patent, amended or unamended. The Patent Authority shall examine whether the request can be met, and, if so, whether the

grounds referred to in section 52 (1) of this Act will prevent the patent from being maintained as amended.

#### Section 53 d

(1) If a request from persons other than the proprietor of the patent cannot be met, the request shall be refused, and the patent shall be maintained unamended.

(2) If the request is met, but the patent cannot be maintained as amended, the Patent Authority shall revoke the patent. If the patent may be maintained as amended, the patent shall be amended accordingly, if the proprietor of the patent approves the amended wording of the Patent Authority. If the proprietor of the patent does not approve the amended wording, the patent shall be revoked.

(3) When a final decision has been made to maintain a patent as amended, the proprietor of the patent shall pay the prescribed fee for publication of new patent specifications within the prescribed time limit. Failure to pay the fee in time shall cause the patent to be revoked.

(4) The Patent Authority shall advertise its decision on an administrative re-examination.

#### Section 53 e<sup>5)</sup>

(1) The patent holder himself may request that his patent be restricted by amending the description, claims, or drawings on the conditions referred to in Section 53 b (2) and (6).

(2) The Patent Authority shall then examine whether the grounds referred to in section 52 (1) of this Act will prevent the patent from being maintained in the amended form desired by the proprietor of the patent. If the desired restriction can then be approved, the patent shall be amended accordingly, and section 53 d (3) and (4) of this Act shall apply *mutatis mutandis*, however, the patent shall be declared to have ceased to have effect, if the fee for publication of new patent specifications is not paid in time.

(3) If, on the other hand, the patent cannot be maintained in the desired restricted form, such request for restriction shall be refused.

#### Section 53 f

If a patent is amended under sections 53 d or 53 e of this Act, copies of the new patent specifications with the amended description, drawings



and claims shall be available from the Patent Authority as from the date when this is advertised under section 53 d (4) of this Act.

#### Section 54

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

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

#### Section 55

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

#### Section 55 a

If a patent is revoked wholly or partially, the patent shall, to the extent that it has been revoked, be considered not to have had the effects referred to in section 3 of this Act already from the date of filing of the patent application. If a patent is restricted at the request of the proprietor of the patent, the amendment shall only take effect from the date when a notice to that effect is advertised.

### Part 8

#### *Obligation to give information about patents*

#### Section 56

(1) An application for a patent who invokes his patent application against another person, before the files of the application have become available to the public, shall be under an obligation on request to consent to the said person getting access to inspect the files of the application. If the application comprises a deposited sample of biological material as referred to in section 8 a of this Act, the said person shall also have a right to obtain a sample. The provisions of section 22 (6), 2<sup>nd</sup> and 3<sup>rd</sup> clause, (7) and (8) of this Act shall apply in those cases.

(2) Any person who, by direct communication to another person or in advertisements or by in-

scription on goods or their packaging or in any other way, indicates that a patent has been applied for or granted, without indicating at the same time the number of the application or the patent, shall be under an obligation to give such information to any person requesting it without undue delay. If it is not explicitly indicated that a patent has been applied for or granted, but circumstances are such as to create that impression, information as to whether a patent has been applied for or granted shall be given on request without undue delay.

### Part 9

#### *Liability to punishment, liability for damages, etc.*

#### Section 57<sup>6)</sup>

(1) Any person who intentionally infringes the exclusive right conferred by a patent (patent infringement) shall be liable to a fine. Under aggravating circumstances, including in particular if the purpose of the infringement is a significant and obviously unlawful profit, the penalty may increase to imprisonment of not more than one year.«

(2) Companies etc. (legal entities) may be held criminally liable according to Part V of the Danish Penal Code.

(3) Proceedings shall be brought by the injured party in case of infringement. Proceedings shall, however, be brought at the request of the injured party in case of infringements under subsection 1, 2<sup>nd</sup> clause, hereof by the public authorities.

#### Section 58

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

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

#### Section 59

(1) In the case of patent infringement the court may, to the extent this is found reasonable and

when so claimed, make decisions to prevent the abuse of products manufactured in accordance with the patented invention or of any apparatuses, tools or other articles the use of which would involve patent infringement. It may thus be decided that the article shall be altered in a specified manner or destroyed or, in the case of a patented article, that it shall be surrendered to the injured party against compensation. This, however, shall not apply to any person who in good faith has acquired the said article or has acquired rights in respect of the article, and who has not himself committed patent infringement.

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

#### Section 60

(1) If any person exploits an invention commercially without permission after the files of the application have been made available to the public, and the application results in a patent, the provisions concerning patent infringement, with the exception of section 57 of this Act, shall apply *mutatis mutandis*. The protection conferred prior to grant of patent shall, however, only extend to subject-matter disclosed both in the claims as worded at the time when the application was made available to the public and in the patent as granted or maintained in amended form under section 23 (3) of this Act.

(2) The person concerned shall only be liable to the extent referred to in section 58 (2) of this Act to pay damages for injury caused by infringement committed prior to the advertisement of the grant of a patent under section 20 of this Act.

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

#### Section 61

In proceedings for patent infringement the invalidity of the patent may only be put in issue if a claim for revocation is set up against the pro-

prietor of the patent, possibly after the latter has been summoned under the rules laid down in section 63 (4) of this Act. If the patent is revoked, the provisions of sections 57 to 60 of this Act shall not apply.

#### Section 62

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

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

#### Section 63

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

(2) If the plaintiff, or the person who has requested an administrative re-examination, does not prove on the day on which the case comes up for trial or when a request for re-examination is filed that notification under subsection 1 hereof has been effected, the court or, in case of a request for re-examination, the Patent Authority may fix a time limit for compliance with the requirements of subsection 1 hereof. If the said time limit is not observed, the case shall be dismissed.

(3) In proceedings for patent infringement brought by the proprietor of the patent the defendant shall notify the Patent Authority and registered licensees in accordance with the rules laid down in subsection 1 hereof, if he intends to claim revocation of the patent. The provisions in

subsection 2 hereof shall apply, *mutatis mutandis* so that the claim for revocation shall be dismissed, if the time limit which has been fixed is not observed.

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

#### Section 64

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

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

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

#### Section 64 a

(1) If the subject-matter of a patent is a process for the manufacture of a new product, the same product shall, when manufactured by any other person than the proprietor of the patent, be deemed to be manufactured on the basis of the patented process, unless evidence to the contrary is submitted.

(2) In connection with the submission of evidence to the contrary, the defendant's justified interest in protecting his manufacturing and business secrets shall be considered.

#### Section 65

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

### Part 10

#### Miscellaneous provisions

#### Section 66<sup>7)</sup>

The Patent and Trademark Office may invite the patent holder to appoint an agent residing in the European Economic Area (EEA) to receive services and other notifications as to the patent on his behalf. The name and address of the agent shall be entered in the Register of Patents.

#### Section 67

(1) Appeals from the decisions of the Patent Office under sections 44, 53 d, 53 e, 72 (1) and (2), 73 and 96 of this Act may be filed by the applicant, the proprietor of the patent or the person who has requested an administrative re-examination or the termination of the patent with the patent Board of appeal not later than 2 months after the date on which he was notified of the decision. Other parties interested in the said decision may file a similar appeal not later than 2 months after the advertisement of the decision.

(2) The fee prescribed for the appeal shall be paid within the time limit referred to in subsection 1 hereof. Failure to do so shall cause the appeal to be dismissed.

(3) The provisions in section 25 (2) to (4) shall apply *mutatis mutandis*.

#### Section 68

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

(2) As far as renewal fees are concerned, the Minister for Business and Industry may direct that one or more of the first fee years shall be exempt from fees.

#### Section 69

(1) The Minister for Business and Industry shall lay down further provisions concerning patent applications and their examination, con-

cerning the examination of oppositions, administrative re-examination, reestablishment, waiver of patents, concerning the arrangement and keeping of the Register of Patents, concerning the publication and contents of the Danish Patent Gazette, concerning exchange of electronic data with the Patent Authority and concerning the procedures of the Patent Office. It may thus be prescribed that the records of the Patent Authority relating to applications filed shall be available to the public. The Minister for Business and Industry may lay down specific rules concerning the days on which the Patent Office shall be closed.

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

#### Section 70

For inventions relating to war material or processes for the manufacture of war materiel, secret patents may be granted in accordance with the special provisions laid down to that effect.

#### Section 71

(1) The Patent Office may on request undertake the performance of special tasks in the nature of technological service.

(2) The Minister for Business and Industry shall lay down rules governing that service and the payment therefor.

(3) Except for Section 4 (2) the Act on Public Access to Documents in Administrative Files shall not apply to the tasks mentioned in (1).

#### Section 72

(1) If, apart from the cases referred to in subsection 2 hereof, the non-observance of a time

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

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

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

#### Section 73

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

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

(2) If the applicant wishes to have his rights re-

established under subsection 1 hereof, he shall file a request to that effect with the Patent Authority before expiry of the time limit referred to.

#### Section 74

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

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

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

#### Section 74 a

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

### Part 10 A

#### *European patents*

#### Section 75

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

(2) European patents may be granted for Denmark.

(3) An application for a European patent shall

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

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

#### Section 76

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

#### Section 77

(1) A European patent shall only have effect in this country provided that the applicant within the prescribed time limit files with the Patent Authority of this country a Danish translation of the text in which the patent, according to the communication by the European Patent office to the applicant, is intended to be granted, and the applicant within the same time limit pays the prescribed publication fee. If the European Patent Office decides to maintain a European patent in amended form, this shall also apply to the amended form.

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

(3) When the translation has been filed and the fee paid, and the European Patent Office has published its decision to let the patent application proceed to grant or to maintain the European patent as amended, the Patent Authority of this country shall publish a notice to that effect. Copies of the translation shall be obtainable from the Patent Authority without delay.



### Section 78

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

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

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

### Section 79

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

### Section 80

If the European Patent Office revokes a European patent wholly or partially, it shall have the effect as had the patent been revoked to the same extent in this country. The Patent Authority of this country shall publish a notice to that effect.

### Section 81

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

(2) If the renewal fee for the European patent is not paid pursuant to subsection 1 hereof, cf. Section 41 of this Act, section 51 of this Act shall apply *mutatis mutandis*. With regard to the first renewal fee, it shall not fall due until 3 months after the date on which the patent is granted.

### Section 82

(1) A European patent application for which the European Patent Office has fixed a filing date

shall from that date have the same effect in this country as an application filed in this country. If the application claims priority pursuant to the European Patent Convention from an earlier date than the filing date, such priority shall also apply in this country.

(2) A European patent application shall be deemed to have been covered by Section 2 (2), second clause when the designation fee for Denmark has been paid under Article 79 (2) of the European Patent Convention. The same shall apply to publication under Article 158 (1) of the Convention provided that such publication by the European Patent Office is considered equivalent to publication under Article 93.

### Section 83

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

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

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

### Section 84

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

drawal of an application before the Patent Authority of this country.

(2) If a European patent application is refused, it shall have the same effect as if the application had been refused by the Patent Authority of this country.

#### Section 85

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

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

#### Section 86

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

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

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

#### Section 87

(1) If the European Patent Office re-establish-

es the rights for a patent applicant or a proprietor of a patent who has failed to observe a time limit, such decision shall also apply in this country.

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

#### Section 88

(1) If an application for a European patent filed with a national patent authority is deemed to be withdrawn due to the fact that the European Patent Office did not receive the application within the prescribed time limit, the Patent Authority shall at the request of the applicant regard the application as converted into an application for a patent in this country, provided that

- (i) the request is filed with the national authority which received the application within 3 months after the applicant has been notified that the application is deemed to be withdrawn,
- (ii) the request is filed with the Patent Authority of this country within 20 months after the filing date of the application or, if priority has been claimed, after the priority date, and
- (iii) the applicant within a time limit to be fixed by the Minister for Business and Industry pays the prescribed application fee and files a translation of the application in Danish.

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

#### Section 89

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

#### Section 89 a

The provisions of this Act regarding deposit of

biological material shall not apply to European patents.

#### Section 90

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

### Part 10 B

#### *Supplementary Protection Certificates*

#### Section 91

(1) The Minister of Business and Industry may lay out rules which are necessary for the application in this Country of the European Community's regulations concerning the implementation of supplementary protection certificates.

(2) The Minister for Business and Industry shall fix the amounts, etc., of fees for filing of an application for a certificate, for resumption of the examination and further processing of an application, for re-establishment of rights, for administrative re-examination, for the bringing of appeals before the Patent Board of Appeal and for the individual fee years.

(3) Section 57 of this Order concerning criminal liability for patent violation similarly applies to violation of the exclusive right which is a consequence of a protection certificate as dealt with in subsection 1.

(4) The Minister for Business and Industry may succeeding negotiations with the Faroe Islands and Greenland's home Rule lay down provisions on the regulations mentioned in subsection 1 concerning certificates to be applicable on the Faroe Islands and Greenland.

### Part 10 c

#### *Community patents, etc.*

#### Section 92

(1) A "Community patent" is a patent that has been granted by the European Patent Office according to a European patent application, cf. Section 75 (1) of this Act pursuant to the Community Patent Convention laid down in the

Agreement relating to Community Patents, done at Luxembourg on 15 December 1989.

(2) Community patents may be granted for Denmark.

#### Section 93

(1) The provisions in the Agreement relating to Community Patents shall in this country apply to Community patents and applications for such patents.

(2) The Minister for Business and Industry shall advertise the provisions laid down by the individual countries pursuant to Article 83 in the Community Patent Convention.

#### Section 94

Sections 75 (3), 80, 82, 84, 87 and 88 of this Act shall apply *mutatis mutandis* to Community patents and to applications for such patents.

#### Section 95

Rights under Article 32 (1) of the Community Patent Convention shall only be accorded to applicants for Community patents who have either forwarded a Danish translation of the claims which have been advertised to the Patent Authority, or who have forwarded such translation to the person exploiting the invention in this country.

#### Section 96

(1) If a patent granted by the Patent Authority concerns an invention for which a Community patent or a European patent for Denmark has been issued to the same inventor or to his successor in title, with the same date of application or, if priority has been claimed, with the same date of priority, the patent granted in this country under Article 75 (1) and (2) of the Community Patent Convention according to the decision of the Patent Authority or by court decision shall be terminated, wholly or partially, provided that a request is made or proceedings are instituted to that effect.

(2) Any person may request a decision by the Patent Authority or institute proceedings for termination, wholly or partially, of a patent under subsection 1 hereof. Sections 53 a to f, 55, 55 a, 63, 64 and 65 of this Act shall apply *mutatis*

*mutandis*. The request shall be accompanied by the prescribed fee.

(3) Proceedings instituted concerning termination while a request in this respect has not been finally examined by the Patent Authority, may be suspended by the court until a final decision has been made by the Patent Authority.

#### Section 97

The Minister for Business and Industry shall lay down further rules for the implementation of the<sup>4)</sup> provisions of this Part of the Act.

### Part 11

#### *Provisions as to entry into force and transitional provision*

(1) This Act shall enter into force on 1 January

1968. At the same time, The Patents Act, cf. Consolidate Act No. 361 of 19 December 1958 shall be repealed. Furthermore, section 4 of the Danish Employee's Inventions Act No. 142 of 29 April 1955 shall be repealed.

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

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

*The Ministry of Business and Industry, 30 August 2001*

OLE STAVAD

/ Mogens Kring

<sup>1)</sup> This Consolidate Patents Act contains comments on entry into force and transitional provisions adopted during the 1999-2000 and 2000-2001 sittings of the Folketing. Provisions as to entry into force and transitional provisions concerning earlier adopted amendments of the Patents Act are to be found in The Consolidate Patents Act No. 926 of 22 September 2000. The amendments in consequence of act on amendment of the Patents Act and the Trade Marks Act no. 1258 of 20 December 2000 mentioned below do not apply to The Faeroes and Greenland. They may, however, come into force by Royal Decree for these parts of the country with the deviancies dictated by the specific Faeroese and Greenland conditions.

<sup>2)</sup> § 12 in the wording here stated entered into force on 1 January 2001, cf. Act no. 1258 of 20 December 2000.

<sup>3)</sup> § 53 a in the wording here stated entered into force on 1 January 2001, cf. Act no. 1258 of 20 December 2000.

<sup>4)</sup> § 53 b in the wording here stated entered into force on 1 January 2001, cf. Act no. 1258 of 20 December 2000. Requests for re-examination of a patent handed in before 1 January 2001 will be treated according to the rules hitherto in force.

<sup>5)</sup> § 53 e in the wording here stated entered into force on 1 January 2001, cf. Act no. 1258 of 20 December 2000.

<sup>6)</sup> § 57 in the wording here stated entered into force on 1 January 2001, cf. Act no. 1258 of 20 December 2000.

<sup>7)</sup> § 66 in the wording here stated entered into force on 1 January 2001, cf. Act no. 1258 of 20 December 2000.