

## **The Consolidate Utility Models Act<sup>1)</sup>**

Publication of the Utility Models Act, cf. Act No. 1431 of 21 December 2005 including the amendments which follow from section 34 of Act No. 538 of 8 June 2006 and section 4 of Act No. 1404 of 27 December 2008.<sup>2)</sup>

### **Part 1**

#### **General provisions**

**1.-(1)** Any creation which is susceptible of industrial application and which provides a solution to a technical problem may on application, in accordance with this Act, be registered as a utility model.

(2) Any person who has created a utility model, or his successor in title, shall upon registration obtain an exclusive right to exploit it commercially.

**2.-(1)** Creations shall not be registered as utility models if they relate only to the following subject-matter:

(i) discoveries, scientific theories and mathematical methods,

(ii) aesthetic creations,

(iii) schemes, rules or methods for performing mental acts, playing games or doing business or programs for computers or

(iv) presentations of information.

(2) Creations shall not be registered as utility models if they relate to

(i) war material or

(ii) methods.

(3) Notwithstanding subsection 2(ii), it shall be possible to register a utility model for products for use in any such methods, including substances and compositions for use in methods for the treatment of the human or animal body by surgery or therapy or diagnostic methods practised on the human or animal body, or products obtained by a microbiological process or other technical processes.

(4) Utility models shall not be granted in respect of plant or animal varieties. If the technical feasibility of the creation is not confined to a particular plant or animal variety, a utility model may, however, be registered even if the subject-matter of the creation is plants or animals. In this Act a "plant variety" means a plant variety as defined in Article 5 of the Council Regulation on Community plant variety rights.

(5) Creations may be registrable even if they relate to a product consisting of or containing biological material. Biological material which is isolated from its natural environment or produced by means of a technical process may be the subject-matter of a creation even if it previously occurred in nature. In this Act "biological material" means any material containing genetic information and capable of

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<sup>1)</sup> This Act contains provisions implementing parts of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (EU Official Journal 2004 No. L 195, p. 15).

reproducing itself or being reproduced in a biological system.

**3.-(1)** The human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene, cannot constitute registrable creations.

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

**4.-(1)** Creations the commercial exploitation of which would be contrary to *ordre public* or morality shall not be registered as utility models.

(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 subsection 1 utility model protection may *inter alia* not be granted in respect of use of human embryos for industrial or commercial purposes.

**5.-(1)** To be registrable a creation shall be new in relation to the state of the art at the date of filing of the application, and it shall differ distinctly therefrom.

(2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, exhibitions, offers for sale, use, reproduction or in any other way. The contents of patent applications or utility model applications filed with effect for Denmark before the date of filing of the utility model application 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 of section 22 of the Patents Act and section 24 of this Act. The requirement in subsection 1 to the effect that the creation shall differ distinctly from the state of the art shall, however, not apply in relation to the contents of such applications.

(3) Utility models registration may, however, be obtained for creations made available to the public if that occurred within the 6 months preceding the filing of the application, and it was in consequence of

(i) an evident abuse in relation to the applicant or his legal predecessor, or

(ii) the fact that the applicant or his legal predecessor has displayed the creation at an official, or officially recognised, international exhibition falling within the terms of the Convention on International Exhibitions, signed at Paris on 22 November 1928.

**6.-(1)** The exclusive right conferred by a utility model registration shall imply that no one except the proprietor of the utility model may without permission from the proprietor of the utility model exploit the creation by making, offering, putting on the market or using the product which is the subject-matter of the utility model protection, or by importing or stocking the product for such purposes.

(2) The exclusive right shall also imply that no one except the proprietor of the utility model may without permission from the proprietor of the utility model exploit the creation by supplying or offering to supply any person who is not entitled to exploit the creation with means for working the creation in this country if these means relate to an essential element of the creation and the person supplying or offering to supply the means knows, or it is obvious in the

circumstances, that they are suitable and intended for such use. This provision shall, however, not apply if the means are staple commercial products, except when the person supplying or offering to supply the means induces the person supplied to commit the acts referred to in subsection 1. For the purpose of the provisions of the 1st and 2nd sentences persons performing the acts referred to in subsection 3(i), (iii) or (iv) shall not be considered entitled to exploit the creation.

(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 utility model or with his consent,

(iii) acts done for experimental purposes relating to the subject-matter of the registered creation or

(iv) the preparation in a pharmacy of a medicinal product according to a medical prescription for individual cases or acts concerning the medicinal product.

**7.-(1)** The protection conferred by a utility model registration of a biological material possessing specific characteristics as a result of the creation shall extend to any biological material derived from that biological material through multiplication or propagation in an identical or divergent form and possessing the same characteristics.

(2) The protection conferred by a utility model registration of a product containing or consisting of genetic information shall extend to any material in which the product is incorporated and in which the genetic information is contained and performs its function, cf., however, section 3.

(3) The protection referred to in subsections 1 and 2 shall not extend to biological material obtained through multiplication or propagation of biological material placed on the market within the territory of an EU Member State by the proprietor of the utility model or with his consent if that 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 further multiplication or propagation.

**8.-(1)** Notwithstanding section 7(1) and (2), the sale or any other form of commercialisation of plant propagating material by the proprietor of the utility model or with his consent to a farmer for agricultural use shall imply an authorisation for the farmer to use the product of his harvest for multiplication or propagation by him on his own farm, the extent and conditions thereof being laid down in Article 14 of the Council Regulation on Community plant variety rights.

(2) Notwithstanding section 7(1) and (2), the sale or any other form of commercialisation of breeding stock or other animal reproductive material by the proprietor of the utility model or with his consent to a farmer shall imply an authorisation for the farmer to use the animal or other animal reproductive material for the purposes of pursuing his own agricultural activity, but not to sell it within the framework or for the purpose of a commercial reproduction activity. The Minister of Economic and Business Affairs shall lay down provisions concerning the extent and the conditions of the farmer's exploitation of such utility model registrations for the purposes of pursuing his own agricultural activity.

**9.-(1)** Any person who, at the time when the utility model application was filed, was exploiting the creation commercially in this country may, notwithstanding a registered

utility model, 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 creation in this country.

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

**10.-(1)** Notwithstanding a utility model having been registered in respect of a creation, persons other than the proprietor of the utility model may exploit the creation by the use of a foreign vehicle, vessel or aircraft during its temporary or accidental presence in this country.

(2) The Minister of Economic and Business Affairs may direct that, notwithstanding a registered utility model, 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.

**11.-(1)** On request an application for a utility model registration of a creation which has been disclosed in a previous application for a patent or a utility model registration in this country or an application for an inventor's certificate, a patent or a utility model protection in another country party to the Paris Convention for the Protection of Industrial Property of 20 March 1883 shall for the purposes of section 5(1) and (2) and section 9 be regarded as filed at the same time as the previous application, provided that the subsequent application is filed within 12 months from the date of filing of the previous application. The same right of priority shall

be enjoyed even if the application for protection does not originate from a country party to the Convention when pursuant to a bilateral or multilateral agreement an equivalent priority from a Danish patent application or utility model application is granted in the country in which the previous application was filed on conditions and with effects which are essentially in conformity with the Convention.

(2) The Minister of Economic and Business Affairs shall lay down the particular terms for the right to claim such priority.

**12.-(1)** If the applicant has previously filed a patent application with effect for Denmark, the applicant may use the patent application, in whole or in part, as a basis for a utility model application in respect of the same creation. The applicant may request that the date of filing applying to the patent application shall apply to the utility model application. If priority has been claimed in the patent application, cf. section 6 of the Patents Act, that claim shall also apply to the utility model application.

(2) The Minister of Economic and Business Affairs shall lay down rules for requests under subsection 1.

## **Part 2**

### **Utility model applications and the examination and other processing thereof, etc.**

**13.-** The Patent Authority of this country shall be the Patent and Trademark Office, headed by a Director, and the Board of Appeal for Patents and Trademarks. For the purposes of this Act, the "Patent Authority" means the Patent Authority of this country, unless otherwise stated.

**14.-(1)** An application for the registration of a utility model shall be filed with the Patent and Trademark Office being the registration authority. The application shall contain a statement of the subject-matter for which protection is sought. A fee shall be paid for the application.

(2) In the application the creation shall be described or shown in a manner sufficiently clear to enable a person skilled in the art to carry it out.

(3) If the application relates to a creation of a product produced by a microbiological process, the application shall, in those cases, only be regarded as disclosed in a sufficiently clear manner if also the requirements of section 15(1) and (2) are fulfilled.

**15.-(1)** If carrying out the creation involves the use of biological material which is not available to the public or which cannot be described in the documents of the application in such a manner as to enable a person skilled in the art to carry out the creation, a sample of the biological material shall be deposited not later than on the date of filing of the application. The sample shall thereafter be deposited in such a manner that a sample may be furnished in Denmark.

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

(3) The Minister of Economic and Business Affairs shall lay down rules concerning the depositing and furnishing of samples pursuant to subsections 1 and 2.

**16.-** In the same application a utility model registration may not be applied for in respect of two or more mutually independent creations.

**17.-** If a utility model registration is applied for in respect of a creation which is disclosed in an earlier utility model application filed by the applicant in which no final decision has been given by the Patent Authority, the later application shall, at the request of the applicant, be deemed to have been filed at the time when the documents disclosing the creation were received by the Patent Authority. The Minister of Economic and Business Affairs shall lay down rules to that effect.

**18.-** An application for a utility model registration may not be amended in such a way that the utility model registration is applied for in respect of subject-matter which was not disclosed in the application as filed.

**19.-(1)** The Patent Authority shall ensure that the application fulfils the requirements of sections 1, 2, 3, 4, 16 and 18.

(2) The applicant may against payment of a fee request the Patent and Trademark Office also to ensure that the requirements to the effect that the creation be new and differ distinctly from the state of the art, cf. section 5, are fulfilled.

**20.-(1)** If the Patent Authority finds that the application does not comply with the requirements, 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.

(2) The application shall be shelved if the applicant fails to file his observations or to take steps to correct the application before the

expiry of the time limit. The notification of the applicant pursuant to subsection 1 shall contain information to that effect.

(3) The examination and other processing of the application shall be resumed if the applicant files his observations or takes steps to correct the application within 2 months after the expiry of the specified time limit and pays the prescribed resumption fee.

(4) The provisions of subsections 1 to 3 shall apply *mutatis mutandis* when the applicant under section 19(2) has requested the Patent and Trademark Office also to ensure that the requirements to the effect that the creation be new and differ distinctly from the state of the art are fulfilled.

**21.**-(1) If the application is found to comply with the requirements, the creation shall be registered. A notification concerning the utility model registration shall be published by the Patent and Trademark Office.

(2) If the Patent Authority has objections to the acceptance of the application, and the applicant has had an opportunity to file his observations on the objections, the application shall be refused, unless the Patent Authority feels called upon once more to invite the applicant to file his observations or to correct the application under section 20.

**22.**-(1) If any person claims before the Patent Authority that he, and not the applicant, is entitled to the creation, 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 utility model application. Information to that effect shall be given in the invitation.

(2) If legal proceedings have been instituted concerning the right to a creation in respect of which a utility model registration is applied for, the examination and other processing of the utility model application may be suspended until a final decision has been given in the legal proceedings.

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

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

**24.**-(1) The creation shall not be registered earlier than 15 months from the date of filing of the application or, if priority has been claimed, from the date of priority, cf. section 11.

(2) At the request of the utility model applicant, the publication of the application or the registration of the creation may be effected earlier.

(3) When 15 months have elapsed from the date of filing or, if priority has been claimed, from the date of priority, the files shall be available to the public even if the creation has not been registered. If a decision has been made to shelve or to refuse the application, the files shall, however, not be available, unless the applicant requests resumption of the proceedings, appeals against the refusal or requests re-establishment of rights under section 66 or 67.

(4) When the files are made available under subsection 2 or 3, an advertisement shall be made to that effect.

(5) If a document contains business secrets which do not relate to a creation in respect of which a utility model registration is applied for 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 15(1), any person shall have the right to obtain a sample of the material when the files are made available under subsection 3. After the utility model registration, and irrespective of the utility model registration having ceased to have effect or been revoked, the furnishing of a sample may be made to any person requesting it. That shall, however, not imply that a sample shall be furnished to any person who, under provisions laid down in or pursuant to law, is not allowed to handle the deposited material. Nor shall a sample be furnished to any person if, due to the dangerous properties of the material, his possession of the sample is supposed to involve obvious danger.

(7) Notwithstanding subsection 6, the applicant may request that, until the utility model has been registered, the furnishing of a sample shall only be effected to an expert in the art. If an application has been refused or withdrawn or deemed to be withdrawn, the applicant may request that for 10 years from the date of filing of the utility model application a sample of the deposited material shall only be furnished to an expert in the art.

(8) The Minister of Economic and Business Affairs shall lay down provisions governing the submission of a request for the furnishing of a sample and the time limit for submitting

such requests and prescribing who may be used as an expert.

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

**25.-(1)** Appeals from the final decision of the Patent and Trademark Office with respect to a utility model application may be filed with the Board of Appeal for Patents and Trademarks by the applicant. The same shall apply to the proprietor of the utility model when a utility model registration is revoked entirely or partially after a request for examination of the registration under section 50. If the utility model registration is maintained in amended or unamended form despite the request, the decision may be appealed against by the person having filed the request. If the latter withdraws his appeal, the appeal may nevertheless be examined provided that there are special grounds for such action.

(2) Appeals under subsection 1 shall be filed with the Board of Appeal for Patents and Trademarks not later than 2 months after the Patent and Trademark Office has notified the party concerned of the decision. The fee prescribed for the appeal shall be paid within the same time limit. Failure to do so shall cause the appeal to be rejected.

(3) Other parties having an interest in the decision in question may, not later than 2 months after the publication of the decision, file a similar appeal.

(4) Decisions given by the Board of Appeal for Patents and Trademarks may not be brought before any other administrative authority.

(5) Decisions made by the Patent and Trademark Office which may be brought before the Board of Appeal for Patents and Trademarks may not be brought before the courts until the decision of the Board of Appeal has been given. If a party wants to bring a decision made by the Board of Appeal for Patents and Trademarks before the courts, proceedings shall be instituted not later than 2 months from the date on which the party concerned was notified of the decision.

(6) Decisions by which a request for the concealment of business secrets under section 24(5) has been refused may be appealed against by the person having made the request.

### **Part 3**

#### **International utility model applications**

**26.**-(1) An “international utility model application” means an application under the Patent Cooperation Treaty, done at Washington on 19 June 1970.

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

(3) Sections 27 to 35 shall apply to international utility model applications designating Denmark.

**27.**- An international utility model application which has been accorded an international filing date by the receiving Office shall have the same effect as a utility model application filed in this country on that date. The provision of section 5(2), 2nd sentence, shall, however, not apply, unless the application has been proceeded with under section 29.

**28.**- An international utility model 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 Patent Cooperation Treaty.

**29.**-(1) If the applicant wishes to proceed with an international utility model application designating Denmark, he shall within 33 months from the international filing date or, if priority is claimed, from the priority date pay the prescribed fee to the Patent Authority and file a translation into Danish of the international application to the extent prescribed by the Minister of Economic and Business Affairs. If the application is written in Danish, the applicant shall within 33 months file a copy of the application.

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

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

**30.**-(1) When an international utility model application has been proceeded with under section 29, the provisions of Parts 1 and 2 shall apply to the application and the examination and other processing thereof with the deviations provided for in the present

section and in sections 31 and 34. The examination and other processing of the application shall only be commenced prior to the expiry of the time limits applicable under section 29 if the applicant so requests.

(2) The provisions of section 24(2) and (3) shall apply even before the application has been proceeded with when the applicant has complied with his obligation under section 29 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.

(3) For the purposes of sections 41 and 43 to 45 concerning compulsory licence, section 53 concerning the obligation to give information on utility models and section 57 concerning the protection of the creation in the period between filing and registration an international utility model application shall be deemed to have been made available to the public when it is available under subsection 2.

(4) If the utility model application complies with the requirements of the Patent Cooperation Treaty relating to form and contents, it shall be accepted in that respect.

**31.-** In the case of an international utility model application a utility model shall only be registered or the application refused after the expiry of a time limit prescribed by the Minister of Economic and Business Affairs, unless the applicant has consented to the application being decided upon before.

**32.-** In the case of an international utility model application the Patent Authority may not without the consent of the applicant register a utility model or publish the application prior to its publication by the International Bureau of the World Intellectual Property Organization (WIPO) or prior to the expiry of 20 months from the international

filing date or, if priority is claimed, from the priority date.

**33.-** If any part of an international utility model application has not been the subject of an international preliminary examination because the applicant has restricted the utility model claims at the invitation of the International Preliminary Examining Authority, the said part of the application shall be considered withdrawn before the Patent Authority, unless the applicant pays the additional fee prescribed in the Patent Cooperation Treaty within 2 months after the date on which the Patent Authority has invited him to pay.

**34.-(1)** If any part of an international utility model 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 creations, and the applicant has not paid the additional fee under the Patent Cooperation Treaty within the prescribed time limit, the Patent Authority shall review the finding to decide whether it was justified. If that 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 has notified the applicant of the result of the review. If the Patent Authority considers that the finding was not justified, it shall proceed with the examination and other processing of the application in its entirety.

(2) The applicant may appeal against a decision under subsection 1 by which a utility model application is found to relate to two or more mutually independent creations. The provisions of section 25 concerning the right of appeal shall apply *mutatis mutandis*.

(3) If the appeal is dismissed, the time limit for payment of the fee under subsection 1

shall be calculated from the date on which the final decision is given.

**35.**-(1) If a receiving Office has refused to accord an international filing date to an international utility model application, the Patent Authority shall, at the request of the applicant, review the decision to decide whether it was justified. The same shall apply to any decision from the International Bureau according to which an application shall be considered withdrawn.

(2) A request for a review under subsection 1 shall be presented to the International Bureau before the expiry of a time limit prescribed by the Minister of Economic and Business Affairs. The Minister of Economic and Business Affairs shall prescribe a time limit and specify the extent for the applicant against payment of a fee to file a translation of the application with the Patent Authority.

(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 Parts 1 and 2. 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 of the Patent Cooperation Treaty relating to form and contents, it shall be accepted in that respect.

(4) The provision of section 5(2), 2nd sentence, shall apply to applications taken up for examination and other processing pursuant to subsection 2, provided that the application is made available to the public under section 24.

#### **Part 4**

#### **Conversion of a European patent application**

**36.**-(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 has not received 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 utility model registration 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 from the date of filing of the application or, if priority has been claimed, from the date of priority, and

(iii) the applicant within a time limit prescribed by the Minister of Economic and Business Affairs pays the prescribed application fee and files a translation of the application into Danish.

(2) If the utility model applicant complies with the requirements of the European Patent Convention relating to the form of the application, the application shall be accepted in that respect.

(3) The Minister of Economic and Business Affairs shall lay down the particular rules concerning the right to convert a European patent application into an application for a utility model registration in this country pursuant to subsection 1.

#### **Part 5**

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

**37.-(1)** The extent of the protection conferred by the utility model registration shall be determined by the utility model claims. For the interpretation of the utility model claims the description and drawing may serve as a guideline.

(2) After registration the protection may not be extended.

**38.-(1)** The utility model registration shall be effective until 3 years have elapsed from the date of filing and may be renewed for two further periods of 3 and 4 years, respectively, against payment of the prescribed fees.

(2) The renewal of the registration shall be advertised.

### **Part 6**

#### **Payment of renewal fees**

**39.-(1)** The renewal fee shall fall due on the last day of the month in which the fee period begins. Renewal fees may not be paid earlier than 3 months before the due date.

(2) For a later application as provided for in section 17, renewal fees in respect of the periods having begun before the date of filing of the later application shall in no case fall due until 2 months have elapsed after the date on which the later application was filed. For an international utility model application renewal fees in respect of periods having begun before the date on which the application was proceeded with under section 29 or taken up for examination and other processing under section 35 or beginning within 2 months after that date shall in no case fall due until 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 Patent and Trademark Office shall collect renewal fees from the utility model applicant, the proprietor of the utility model or an appointed agent, if any, but the Patent and Trademark Office shall not be held responsible for loss of rights as a consequence of failure to collect.

### **Part 7**

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

**40.-(1)** The transfer of a utility model registration, the grant of a licence, the pledging of a utility model registration, the levying of execution on the utility model registration or the commencement of insolvency proceedings against the proprietor of the utility model shall on request be entered in the Register of Utility Models.

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

(3) The provisions of subsections 1 and 2 shall also apply to compulsory licences and rights under section 48(2).

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

**41.-(1)** If a registered creation is not worked to a reasonable extent in this country when 3 years have elapsed from the registration of the utility model and 4 years have elapsed from the filing of the utility model application, any

person wishing to work the creation in this country may obtain a compulsory licence to do so, unless there are legitimate reasons for the failure to work the creation.

(2) The Minister of Economic and Business Affairs may provide that for the purposes of subsection 1 working of the creation in another country shall be equivalent to working in this country. Such a provision may be made subject to reciprocity.

**42.**-(1) The proprietor of a registered utility model the exploitation of which is dependent on a patent or a registered utility model which belongs to another person may obtain a compulsory licence to exploit the invention protected by the patent or the creation protected by the utility model registration, provided that the former creation constitutes significant technical progress of considerable economic importance.

(2) The proprietor of the patent or of the registered utility model for the exploitation of which a compulsory licence has been granted pursuant to subsection 1 shall on reasonable terms be able to obtain a compulsory licence for the exploitation of the other creation.

**43.**- When required by important public interests, any person who wishes to exploit a creation commercially in respect of which another person holds a utility model protection may obtain a compulsory licence to do so.

**44.**-(1) Any person who, at the time when a utility model application was made available to the public, was exploiting the creation in respect of which a utility model registration is applied for commercially in this country may, if the application results in a registered utility model, obtain a compulsory licence for the exploitation, provided that exceptional circumstances make it desirable and the person in question had no knowledge of the application and could not reasonably have

obtained such knowledge. Such a right shall also, under similar conditions, be enjoyed by any person who had made substantial preparations for a commercial exploitation of the creation in this country.

(2) Such a compulsory licence may include the time preceding the registration of the utility model.

(3) The Minister of Economic and Business Affairs may provide that, for the purposes of the provision of subsection 1, exploitation in another country shall be equivalent to exploitation in this country. Such a provision may be made subject to reciprocity.

**45.**-(1) A compulsory licence shall only be granted to persons who have not been able by agreement to obtain a licence on reasonable terms and who may be considered capable of exploiting the creation in a reasonable and proper manner and in compliance with the licence.

(2) A compulsory licence shall not prevent the proprietor of the utility model from exploiting the creation himself or from granting licences to others.

(3) A compulsory licence may only be transferred to others together with the business in which it is exploited or in which the exploitation was intended. With respect to compulsory licences granted pursuant to section 42(1) it shall moreover apply that any transfer of the compulsory licence shall be effected together with the utility model registration the exploitation of which is dependent on a patent or a registered utility model which belongs to another person.

(4) Compulsory licences concerning semiconductor technology may only be granted for public non-commercial exploitation or for terminating an anti-competitive practice which has been

established by a court decision or an administrative decision.

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

## **Part 8**

### **Termination of the registration, administrative examination, etc.**

**47.-(1)** A utility model registration may be revoked by a court decision if

(i) the registration has not been effected in accordance with sections 1 to 5,

(ii) the registration relates to a creation which is not described or shown in a manner sufficiently clear to enable a person skilled in the art to carry it out,

(iii) the scope of the protection has been changed in contravention of section 18, or

(iv) the scope of the protection has been extended after the registration.

(2) If the proprietor of the utility model is only partially entitled to the utility model registration, the utility model registration may, however, not be revoked in its entirety.

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

(4) Proceedings on the ground that a utility model has been registered for another person than the person entitled thereto under section

1 may only be instituted by the person claiming to be entitled to the utility model registration. Such proceedings shall be instituted within 1 year after the entitled person has obtained knowledge of the registration of the utility model and of the other circumstances on which the proceedings are based. If the proprietor of the utility model was in good faith when the utility model was registered or when the proprietor of the utility model acquired the utility model registration, the proceedings may not be instituted later than 3 years after the registration of the utility model.

**48.-(1)** If a utility model has been registered for another person than the person entitled thereto under section 1, the court shall transfer the registration to the entitled person if he so claims. The provisions of section 47(4) concerning the time for the institution of the proceedings shall apply *mutatis mutandis*.

(2) The person who is deprived of the registration shall, if he in good faith has exploited the creation commercially in this country or has made substantial preparations for such exploitation, be entitled, for a reasonable compensation and on reasonable terms 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 licences.

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

**49.-(1)** If the proprietor of a utility model surrenders the utility model registration to the Patent Authority, the Patent Authority shall declare the utility model registration to have ceased to have effect in its entirety.

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

**50.**-(1) When a utility model registration has been effected, any person may against payment of a fee file a request with the Patent Authority for examination of the registration.

(2) A request for examination may only be based on the grounds for revocation referred to in section 47(1).

(3) The Patent Authority may require that a request pursuant to subsection 1 be accompanied by documentation.

(4) If proceedings concerning a utility model registration are instituted before the courts prior to a final decision having been given with respect to a request pursuant to subsection 1 relating to the same registration, the Patent Authority shall suspend the examination of the request until the case before the courts has been finally decided upon, unless the request has been filed by the proprietor of the utility model.

**51.**- If a request pursuant to section 50 has been filed, the proprietor of the utility model shall be notified thereof and be invited to file his observations thereon. The Minister of Economic and Business Affairs shall lay down rules to that effect.

**52.**-(1) If after the filing of a request under section 50 the Patent Authority finds that there are obstacles to registration, the registration shall lapse. The lapse of the registration shall be advertised by the Patent and Trademark Office when the decision has become final.

(2) If there are no obstacles to maintaining the utility model registration in amended form, the Patent Authority shall decide to amend the

registration, provided that the proprietor of the utility model approves the amended text in which the Patent Authority intends to maintain the utility model registration and a fee for the advertisement of a notification concerning the amendment has been paid before the expiry of the prescribed time limit.

(3) If the proprietor of the utility model disapproves of the amended text or does not pay the fee for advertisement of the amendment in due time, the utility model registration shall be considered to have ceased to have effect.

## **Part 9**

### **Obligation to give information about utility models**

**53.**-(1) A utility model applicant or a proprietor of a utility model who invokes an application for a utility model registration or a registered utility model against another person before the files concerning the registration have been made available to the public shall be under an obligation on request to consent to letting the said person obtain inspection of the files of the application. If the application comprises a deposited sample of biological material as referred to in section 15(1), the said person shall also have the right to obtain a sample. Section 24(6), 2nd and 3rd sentences, and (7) to (9) shall apply in those cases.

(2) Any person who, either by direct communication with another person or in advertisements or by inscription on goods or their packaging or in any other way, indicates that a utility model registration has been applied for or granted without indicating at the same time the number of the registration or the application, 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 utility model has been applied for or registered, but the

information is such as to create that impression, information as to whether a utility model has been applied for or registered shall be given on request without undue delay.

## Part 10

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

**54.**<sup>3)</sup>-(1) Any person who intentionally or grossly negligently infringes the exclusive right conferred by a utility model registration (utility model infringement) shall be punished with a fine.

(2) If the infringement has been committed intentionally and under aggravating circumstances, the penalty may increase to imprisonment of up to 18 months, unless a heavier penalty is provided for by section 299b of the Penal Code. Aggravating circumstances shall in particular be considered to exist if a significant and obviously unlawful profit is intended by the infringement.

(3) Companies, etc. (legal entities) may be held liable to punishment under the rules of Part 5 of the Penal Code.

(4) In the case of infringements comprised by subsection 1 proceedings shall be instituted by the injured party. In the case of infringements comprised by subsection 2 proceedings shall be instituted only at the request of the injured party, unless the institution of proceedings is required in the interests of the public.

**55.**-(1) Any person who intentionally or negligently commits utility model infringement shall pay

(i) a reasonable compensation to the injured party for the exploitation and

(ii) damages to the injured party for the further injury which the infringement has caused.

(2) In fixing the damages according to subsection 1(ii) *inter alia* the loss of profit suffered by the injured party and the illicit profit obtained by the infringer shall be taken into consideration.

(3) In cases comprised by subsection 1 an additional compensation may be fixed to the injured party for non-financial injury.

**56.**-(1) For the purpose of preventing further utility model infringements the court may, when so claimed, *inter alia* decide that a product constituting a utility model infringement shall be

(i) withdrawn from the market,

(ii) removed definitively from the market,

(iii) destroyed,

(iv) surrendered to the injured party or

(v) altered in a specified manner.

(2) Subsection 1 shall apply *mutatis mutandis* to apparatuses, materials, tools or the like which have primarily been used for illegal production of a registered creation.

(3) The measures under subsection 1 shall be implemented without compensation to the infringer and shall not affect any damages to the injured party. The measures shall be implemented at the expense of the infringer, unless special circumstances tell against it.

(4) In giving a court decision on measures under subsection 1 the court shall take into consideration the proportion between the extent of the infringement, the prescribed measures and the interests of any third party.

(5) The court may, when so claimed, grant permission to the infringer to have the products, apparatuses, materials, tools or the like referred to in subsections 1 and 2 at his disposal during the term of the registration or part thereof against a reasonable compensation. However, this shall only apply if

(i) the infringer has neither acted intentionally nor negligently,

(ii) the measures under subsection 1 would cause the infringer disproportionate harm and

(iii) a reasonable compensation is sufficient.

**57.**-(1) If any person exploits a creation commercially without permission after the files of the application have been made available to the public, and the application results in a utility model registration, the provisions concerning utility model infringement, with the exception of section 54 concerning fines and imprisonment, shall apply *mutatis mutandis*. The utility model protection conferred prior to the registration shall only extend to subject-matter disclosed both in the utility model claims as worded at the time when the application was made available to the public and in the utility model registration as effected or as maintained in amended form under section 52(2).

(2) The person concerned shall only pay damages under section 55(2) for injury caused by infringements committed prior to the advertisement of the utility model registration under section 21 to the extent found reasonable.

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

**58.**-(1) In a court decision by which a person is held liable under sections 55 and 56 the court may, if so requested, decide that the

court decision in full or extracts thereof shall be published.

(2) The obligation to publish shall rest with the infringer. The publication shall be made at the expense of the infringer and in such a prominent manner as may reasonably be required.

**59.**-(1) Any person who institutes proceedings for the entire or partial revocation of a utility model registration or for the transfer of the registration shall notify the Patent and Trademark Office thereof for the purpose of entry in the Register of Utility Models and shall by registered letter notify any licensee who is entered in the Register of Utility Models with his address of the proceedings. Any licensee who wishes to institute proceedings for infringement of the utility model right shall in a similar way notify the proprietor of the utility model thereof.

(2) If the plaintiff does not prove in the writ of summons that the notifications referred to in subsection 1 have been given, the court may fix a time limit for compliance with the requirements. If the said time limit is not observed, the case shall be dismissed.

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

(4) In proceedings for utility model infringement instituted by a licensee, the defendant may summon the proprietor of the utility model to attend without regard to his venue and claim against him that the utility

model registration be revoked. The provisions of Part 34 of the Administration of Justice Act shall apply *mutatis mutandis*.

**60.**<sup>4)</sup>-(1) Any person who, in the cases referred to in section 53, fails to comply with his obligations or gives false information shall be punished with a fine, in so far as a severer punishment is not provided for by other legislation, and shall be liable to compensate for the injury caused thereby to the extent found reasonable.

(2) Section 54(3) and (4) shall apply *mutatis mutandis*.

**61.**<sup>5)</sup>-(1) Applicants and proprietors of utility models who are not residents of this country shall, in proceedings instituted under this Act, be deemed to have their venue in Copenhagen.

(2) Office copies of court decisions concerning utility model applications or utility model registrations shall be sent to the Patent and Trademark Office on the initiative of the court.

**61a.**<sup>6)</sup> - If the customs and taxation authorities become suspicious of infringements comprised by section 54, information to that effect may be passed on to the proprietor of the right.

## Part 11

### Miscellaneous provisions

**62.-** The Patent and Trademark Office may invite the proprietor of a utility model to appoint an agent residing in the European Economic Area (EEA) to receive notifications concerning the registered utility model on behalf of the proprietor of the utility model. The name and address of the agent shall be entered in the Register of Utility Models.

**63.**-(1) Appeals from the decisions of the Patent and Trademark Office pursuant to sections 40, 66 and 67 may be filed with the Board of Appeal for Patents and Trademarks by the applicant, the proprietor of the utility model or the person who has requested examination not later than 2 months after the date on which the party in question was notified of the decision. Other parties having an interest 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. Failure to do so shall cause the appeal to be rejected.

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

**64.**-(1) The Minister of Economic and Business Affairs shall lay down specific rules concerning utility model applications and their examination and other processing and concerning the examination of requests for examination, concerning re-establishment of rights, concerning surrender of utility model registrations, concerning the arrangement and keeping of the Register of Utility Models, concerning the publication and contents of the Utility Model Gazette, concerning the exchange of electronic data with the Patent Authority and concerning the procedures of the Patent and Trademark Office. It may thus be prescribed that the records of the Patent Authority relating to applications filed shall be available to the public. The Minister of Economic and Business Affairs may lay down specific rules concerning the days on which the Patent Authority shall be closed.

(2) The Minister of Economic and Business Affairs may direct that the Patent Authority at the request of the authority of another country may give information to that authority about the examination and other processing of utility model applications filed in this country

and that the Patent Authority, in deciding whether the criteria for registrability have been met, may accept novelty searches which have been carried out for that purpose by a corresponding authority in another country or by an international institution.

(3) The Minister of Economic and Business Affairs 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 utility model shall furnish information about the result of the examination as to the registrability of the creation which has been communicated to the applicant 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 utility model application referred to in Part 3 which has been the subject of an international preliminary examination on which a report has been filed with the Patent Authority.

**65.**-(1) The Patent and Trademark Office may on request undertake the performance of special tasks concerning utility models and utility model rights. The Minister of Economic and Business Affairs shall lay down rules governing that service, the payment therefor and the payment of fees for reminders in the case of late payment.

(2) The Access to Public Administration Files Act shall, except for section 4(2), pursuant to which it is possible to claim to be notified about personal matters referred to in documents, not apply to the tasks referred to in subsection 1, 1st sentence.

**66.**-(1) If 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 a utility model applicant or a proprietor of a utility model 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 re-establishment of rights shall be paid within the same time limits.

(2) Subsection 1 shall apply to the time limit concerning priority referred to in section 11(1) if a utility model applicant in a subsequent application requests re-establishment of his priority within 2 months from the expiry of the time limit referred to in section 11(1).

**67.**-(1) If the applicant who wishes to proceed with an international utility model application, cf. section 29, has availed himself of mailing, and the mail is not received in due time, but the act is completed within 2 months after the date on which the applicant noticed or should have noticed that the time limit was exceeded and not later than 1 year after the expiry of the time limit, the Patent Authority shall re-establish the rights, provided that

(i) within the 10 days preceding the expiry of the time limit the postal service was interrupted on account of war, revolution, civil disorder, strike, natural calamity or other like reason in the locality where the sender has his place of business or is staying, 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 letter 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 utility model applicant wishes to have his rights re-established under subsection 1, he shall file a request to that effect with the Patent Authority before the expiry of the time limit referred to.

**68.**-(1) When a request for the re-establishment of rights under section 66 or 67 has been complied with and, in consequence, a utility model application shall be taken up for further processing, or a lapsed utility model registration shall be regarded as maintained, an advertisement shall be made to that effect.

(2) Any person who, after the expiry of the time limit prescribed for resumption of the examination and other processing of a shelved application or after the refusal of the application or after the advertisement of the lapse of the utility model registration, but prior to the advertisement under subsection 1, in good faith has commenced a commercial exploitation of the creation in this country or has made substantial preparations for such exploitation may continue the exploitation retaining its general character.

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

**69.**- The Minister of Economic and Business Affairs shall fix the amounts, etc. of the fees referred to in this Act.

**70.**- The Minister of Economic and Business Affairs shall after negotiation with the Minister of Defence and the Minister of Justice lay down rules prescribing what "war material" shall mean for the purposes of this Act.

**71.**- If the Minister of Economic and Business Affairs refers his or hers rights under this Act to the Patent and Trademark 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.

**72.**- With respect to acts concerning products which have been put on the market in another state which has ratified or acceded to the Agreement relating to Community Patents Article 76 of the Community Patent Convention shall apply.

**73.**- The provisions of Article 75(1) and (2) of the Community Patent Convention concerning the entire or partial termination of a patent granted by the Patent Authority of this country shall apply *mutatis mutandis* to utility models.

## **Part 12**

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

**74.**-(1) This Act shall enter into force on 1 January 2007. At the same time the Utility Models Act, cf. Consolidate Act No. 367 of 9 June 1998, shall be repealed.

(2) With respect to sections 55, 56 and 58 they shall enter into force on 1 January 2006.

(3) This Act shall apply to utility models registered and applications filed after the entry into force of this Act. With respect to utility model applications filed prior to the entry into force of this Act, the previous rules shall continue to apply.

(4) The rules concerning re-establishment of rights, cf. sections 66 to 68, and the rules concerning examination pursuant to section 50 shall also apply to applications and registrations filed before the entry into force of this Act.

**75.-** This Act shall not apply to the Faeroe Islands and Greenland, but may by Royal Ordinance be put into force for those islands with such deviations as the special circumstances of the Faeroe Islands and Greenland may require.

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Act No. 538 of 8 June 2006 to Amend the Administration of Justice Act and various other Acts contains the following provisions as to entry into force and transitional provisions:

### **Section 105**

(1) This Act shall enter into force on 1 January 2007, cf., however, subsections 2 to 22 and section 106.

(2) to (22) (Transitional provisions, not reproduced).

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Act No. 1404 of 27 December 2008 to Amend the Trade Marks Act, the Penal Code, the Radio and Television Broadcasting Act and various other Acts contains the following provisions as to entry into force and transitional provisions:

### **Section 9**

(1) This Act shall enter into force on 1 January 2009.

(2) to (4) (Transitional provisions, not reproduced).

The Ministry of Economic and Business Affairs, 28 January 2009

LENE ESPERSEN

/Jesper Kongstad

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<sup>2)</sup> This Consolidate Act contains information about provisions as to entry into force and transitional provisions adopted during the sessional years 2005/2006 to 2008/2009 of the Danish Parliament (the Folketing). The amendments indicated below in consequence of Act No. 538 of 8 June 2006 to Amend the Administration of Justice Act and various other Acts and Act No. 1404 of 27 December 2008 to Amend the Trade Marks Act, the Penal Code, the Radio and Television Broadcasting Act and various other Acts shall not apply to the Faeroe Islands and Greenland, but may by Royal Ordinance be put into force for those islands with such deviations as the special circumstances of the Faeroe Islands and Greenland may require.

<sup>3)</sup> Section 54 in the wording of this Act entered into force on 1 January 2009, cf. Act No. 1404 of 27 December 2008.

<sup>4)</sup> Section 60(2) in the wording of this Act entered into force on 1 January 2009, cf. Act No. 1404 of 27 December 2008.

<sup>5)</sup> Section 61 in the wording of this Act entered into force on 1 January 2007, cf. Act No. 538 of 8 June 2006.

<sup>6)</sup> Section 61a entered into force on 1 January 2009 and was inserted by Act No. 1404 of 27 December 2008.