

The Consolidate Secret Patents Act

Publication of the Secret Patents Act, cf. Consolidate Act No. 732 of 27 November 1989 as amended by section 7 of Act No. 1370 of 28 December 2011.¹⁾

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

(2) For the purposes of this Act the meaning of “war materiel” shall be defined by Royal decree.

2. If required for the sake of the defence of the country, the Minister of Business and Growth may at the request of the Minister of Defence decide that a patent for an invention comprehended by section 1 shall be granted as a secret patent, provided that the application for a patent for the said invention has been filed by a person or an enterprise residing in this country or by a Danish institution.

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

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

3.-(1) An invention comprehended by section 1 and being the subject of an application for a patent filed by a person or an enterprise residing in this country or by a Danish institution

may not be published, disclosed to others or made the subject of an application for a patent, for the registration of a utility model or for any other protection in a foreign state without the authorization of the Minister of Defence. Neither may rights attached to such application be transferred to others by agreement or by legal proceedings without the consent of the Minister of Defence.

(2) The provisions of subsection (1) shall not apply after the expiry of 3 months from the filing of the application, unless it has been decided that a patent, if granted, shall be granted as a secret patent or the applicant has been notified that the matter has not been finally decided upon and that, consequently, the provisions of subsection (1) will be applicable for a further 3 months.

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

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

6. If it has been decided to grant a patent as a secret patent, the advertisement of the grant

provided for in section 26 of the Patents Act and the entry in the Register referred to in section 27 shall be effected with an indication of the words “secret patent” and without any indication of the subject-matter of the patent and the names of the proprietor of the patent and his agent. Also any further advertisements concerning the patent shall be effected with an indication of the said words and without any indication of the information referred to. Until further notice printing and publication of the patent specification shall not be effected, and the files of the patent application and the patent shall not be open to inspection. The publication fee shall, however, be payable in the usual way.

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

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

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

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

9. The provisions of section 8 (1) and (2) shall apply mutatis mutandis if it is proved to the Patent Authority that the invention has been

disclosed in such a manner as to enable a person skilled in the art to carry it out.

10. The Minister of Business and Growth may direct that applications for patents for inventions comprehended by section 1 and filed in this country by institutions, persons or enterprises residing in a foreign state shall be examined and processed according to the provisions of this Act and that the patents, if granted, shall be granted as secret patents.

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

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

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

12. After negotiation with the Minister of Defence the Minister of Business and Growth may lay down the provisions necessary for the implementation of this Act, including provisions governing the right of the Ministry of Business and Growth and the Ministry of Defence to make themselves acquainted with the patent applications files with the Patent and Trademark office.

Act. No. 1370 of 28 December 2011 contains the following provision as to entry into force:

Section 9

This Act shall enter into force on 1 February 2012.

The Ministry of Business and Growth, 24 January 2012

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/Jesper Kongstad

¹⁾ This Consolidate Act contains comments on provisions as to entry into force and transitional provisions adopted during the sessional year 2011/2012 of the Danish Parliament (the Folketing). Provisions as to entry into force and transitional provisions for previously adopted amendments to the Secret Patents Act are laid down in Consolidate Act No. 732 of 27 November 1989. The amendment indicated below in consequence of Act No. 1370 of 28 December 2011 to Amend the Patents Act and various other Acts shall not apply to the Faroe Islands and Greenland, but it may by Royal Ordinance enter into force for these islands with such deviations as the circumstances of the Faroe Islands and Greenland may require.

²⁾ Section 11(1) in the wording of this Act entered into force on 1 February 2012, cf. Act No. 1370 of 28 December 2011.