

The Patent and Trademark Office

Order No. 25 of 18 January 2013

Order on Patents and Supplementary Protection Certificates

Pursuant to section 5(2), section 6(2), section 8a, section 8b(2), section 9, section 11, section 22(7), section 22(8), section 28(2), section 31, section 34, section 38(2), section 45(2), section 48(3), section 69, section 88(1)(iii), section 90, section 91 and section 97 of the Patents Act, cf. Consolidate Act No. 108 of 24 January 2012, and by authority under section 1 of Order No. 126 of 19 February 2009 on reference of certain rights to the Patent and Trademark Office, it is laid down that:

Part I

Patent applications

Chapter 1

Scope

1.- Unless otherwise provided, the provisions relating to patent applications shall only apply to

- (i) Danish patent applications,
- (ii) international applications proceeded with under section 31 of the Patents Act or taken up for examination and other processing under section 38 of the Patents Act, and
- (iii) European patent applications converted into Danish patent applications pursuant to section 88 of the Patents Act.

Chapter 2

The contents and filing of applications

2.-(1) Danish patent applications shall be filed with the Patent and Trademark Office. Application forms may be supplied by the Patent and Trademark Office or be downloaded from the website of the Office. Applications may also be filled in and filed via the website of the Office.

(2) International applications designating Denmark shall be filed with an office or an international organisation being the prescribed receiving Office under the Patent Cooperation Treaty (PCT). Provisions relating to the Patent and Trademark Office as receiving Office are laid down in sections 86 to 89.

(3) European patent applications designating Denmark shall be filed with an office or a European organisation being the prescribed receiving Office under the European Patent Convention. Provisions relating to the receipt of European patent applications by the Patent and Trademark Office are laid down in section 93.

3.-(1) A Danish patent application shall state:

- (i) The applicant's name or firm name, postal address and, if the applicant is not

represented by an agent, the applicant's telephone number and, if the applicant is represented by an agent, the latter's name or firm name, postal address and telephone number.

(ii) If the patent is applied for by several applicants jointly, and those applicants are not represented by an agent: Information as to whether one of the applicants shall be authorised to receive communications from the Patent and Trademark Office on behalf of all the applicants, since otherwise the applicant mentioned first will automatically receive communications from the Patent and Trademark Office on behalf of all the applicants.

(iii) The inventor's name and postal address.

(iv) A brief and factual title of the claimed invention.

(v) Information as to where the application serving as a basis for the priority claim has been filed and the date of filing and number of that application, if priority is claimed under section 6 of the Patents Act.

(vi) The number of the parent application and the effective date applied for, if the application is resulting from division or excision.

(vii) If the application comprises the deposit of a sample of biological material as referred to in section 8a(1) of the Patents Act: Information to that effect.

(viii) If the patent is applied for by someone other than the inventor: Information about the applicant's title to the invention, and information to the effect that the inventor has been informed of the filing of an application

for a patent for the invention, cf. section 8(4) of the Patents Act.

(ix) The documents accompanying the application.

(2) The documents accompanying the application shall include:

(i) a description of the invention, including any drawings, photographs and sequence listing, as well as claims and an abstract, and

(ii) a power of attorney, cf. section 102.

(3) The prescribed fee shall accompany the application.

(4) If the patent is applied for by someone other than the inventor, the Patent and Trademark Office shall send a notification to the inventor to the address stated in the application to the effect that he or she is indicated as inventor in a patent application. That shall not apply, however, if priority has been claimed in the application under section 6 of the Patents Act or if a declaration of transfer in which the invention is transferred from the inventor to the applicant has been filed with the application.

(5) If an invention relates to or makes use of a biological material, the patent application shall contain information about the geographical origin of the material if the applicant is aware thereof. If the applicant is not aware of the geographical origin of the material, that shall appear from the application. Lack of information about the geographical origin of the material or about the applicant's non-awareness thereof shall not affect the examination and other processing of the patent application or the validity of the rights conferred by the granted patent.

(6) If an invention relates to or makes use of a biological material of human origin, it shall appear from the patent application whether the person from whom the biological material originates has given his consent to the filing of the application. The information about consent shall not affect the examination and other processing of the patent application or the validity of the rights conferred by the granted patent.

(7) The information referred to in subsections 1 to 6 shall be available to the public when the application is available to the public pursuant to sections 22 and 33(3) of the Patents Act.

4.- If the applicant wishes the search referred to in section 9 of the Patents Act to be performed, a request to that effect shall be filed not later than three months from the date of filing of the application or from the date on which the application shall be deemed to have been filed, cf. section 37. The fee for the search shall be paid within the same time limit.

5.-(1) If the application at the filing fulfils the conditions under section 8b(1)(i) to (iii) of the Patents Act, that date shall be regarded as the date of filing. Section 8b(1)(iii) of the Patents Act shall not be considered fulfilled if the applicant has only filed drawings, photographs, a sequence listing and a title.

(2) If the conditions laid down in section 8b of the Patents Act for the accordance of a date of filing are not fulfilled, the Patent and Trademark Office shall invite the applicant to remedy the deficiencies before the expiry of a time limit of two months from the request to that effect.

(3) Where one or more of the conditions laid down in section 8b(1) of the Patents Act are not fulfilled in the application as originally filed, the date on which all the conditions are subsequently fulfilled shall be regarded as the date of filing of the application, provided that the time limit referred to in section 8b(3) of the Patents Act has been observed. If the Patent and Trademark Office does not have information enabling it to contact the applicant pursuant to subsection 2, the date on which all conditions are fulfilled shall be regarded as the date of filing of the application, provided that the conditions are fulfilled within two months from the filing of the original application.

(4) Where part of the description is missing from the application, i.a. part of the text of the description or a drawing, the Patent and Trademark Office shall invite the applicant to submit the missing part before the expiry of a time limit of two months from the request to that effect.

(5) Where a missing part of the description is filed with the Office before the expiry of a time limit of two months calculated from the date on which one or more of the conditions pursuant to section 8b(1) of the Patents Act are fulfilled or from the forwarding of the invitation to the applicant pursuant to subsection 4, that part of the description shall be included in the application and, subject to subsections 6 and 7, the date of filing shall then be the date on which the Patent and Trademark Office has received the said part of the description.

(6) Where the missing part of the description has been filed as indicated in subsection 5, and the application as

originally filed contains a claim for priority from a previously filed application, the date of filing shall, if so requested, be the date on which the conditions in section 8b(1) of the Patents Act are fulfilled. The applicant shall within a time limit of two months from the request of the Office to that effect file a copy of the previously filed application or, if that is not drawn up in one of the languages referred to in section 6, a translation into one of those languages. The Office may grant exemption from the requirement of filing a copy of the previously filed application.

(7) Where the missing part of the description filed pursuant to subsection 5 is withdrawn within a time limit of two months calculated from the receipt thereof by the Patent and Trademark Office, the date of filing shall be the date on which the conditions in section 8b(1) of the Patents Act are fulfilled.

(8) If an application contains a reference to a previous application drawn up in one of the languages referred to in section 6(1), that reference may replace the description for the purpose of according the date of filing of the application. The reference shall contain information about the number of the previous application, the authority with which it was filed and a request to the effect that the description in the previously filed application shall constitute the description for the purpose of according the date of filing. Moreover, the applicant shall within a time limit of two months from the request of the Office to that effect file a copy of the previously filed application or, if that is not in accordance with

section 6, a translation thereof. The Office may grant exemption from the requirement of filing a copy of the previously filed application.

Chapter 3

Languages and presentation of applications

6.-(1) The description, including any drawings, photographs and sequence listing, as well as the claims and the abstract shall be drawn up in Danish or English.

(2) If a document is drawn up in another language than those prescribed in subsection 1, the Patent and Trademark Office may require the filing of a translation into Danish or English within a time limit to be prescribed by the Office. Translations may be required to be certified by a translator or in another specified prescribed manner.

(3) If an application has been subject to a novelty search and an examination as to patentability on the basis of documents which are not drawn up in Danish, the claims shall be filed in Danish when the Patent and Trademark Office has concluded that the patent may be granted. The description, including any drawings, photographs and sequence listing, as well as the abstract shall be available either in Danish or in English.

7.-(1) The description, including any drawings, photographs and sequence listing, as well as the claims and the abstract shall be presented in a such a form that they are suitable for reproduction.

(2) The said documents and amendments thereto shall be filed in the form prescribed by the Patent and Trademark Office.

Chapter 4

Priority

8.-(1) In order to obtain priority under section 6 of the Patents Act the applicant shall submit a claim to that effect. The applicant may submit a priority claim or correct a priority claim within 16 months from the priority date or, where the correction or submission of a priority claim will cause a change of the priority date, 16 months from the changed priority date whichever 16-month period expires first. It shall, however, be possible to correct or submit a priority claim up to four months from the date of filing of the application.

(2) The claim shall contain information as to where the application whose priority is claimed was filed as well as the date of filing of that application. With respect to a Danish patent application, the applicant shall, moreover, submit information about the number of the application whose priority is claimed as soon as possible.

(3) If an application is divided under section 31, the priority claim for the parent application shall also without any separate claim apply to new applications resulting from the division.

(4) If priority is claimed after the filing of the application, or if the priority claim is withdrawn, that shall be effected by submission of a separate notification to the Patent and Trademark Office.

9.- The provision in section 6(1), 1st sentence, of the Patents Act shall apply *mutatis mutandis* to applications filed in a state which has ratified or acceded to the Agreement Establishing the World Trade Organisation (WTO).

10.-(1) An applicant who has claimed priority shall within 16 months from the priority date file with the Patent and Trademark Office a copy of the previously filed application together with a certification from the authority which received that application as regards the correctness of the filed copy as well as information about the applicant's name and the date of filing of the said application.

(2) The Patent Authority may grant exemption from the obligation to file the documentation prescribed in subsection 1.

(3) If the documentation pursuant to subsection 1 is drawn up in another language than the languages accepted under section 103, and the validity of the priority claim is important to the examination by the Patent and Trademark Office as to patentability, the Patent and Trademark Office may request the applicant to file a translation of the document into Danish or English within a time limit to be prescribed by the Office. The translation may be required to be certified by a translator or in another specified prescribed manner.

(4) If the applicant fails to file the required documentation in due time in accordance with subsections 1 and 3, the applicant's right of priority shall lapse.

11.-(1) For an application to be capable of serving as a basis for priority under section 8, it shall be the first application in which the invention is disclosed.

(2) If the person who filed the first application or his successor in title has filed a subsequent application relating to the same invention with the same authority, the subsequent application may serve as a basis for claiming priority provided that, at the time of the filing of the subsequent application, the first application has been withdrawn, shelved or refused without having been made available to the public and without leaving any rights outstanding or having served as a basis for claiming priority. If priority has been obtained on the basis of such a subsequent application, the first application may no longer serve as a basis for claiming priority.

12.- A priority claim may be filed for part of an application. For one and the same application priority may be claimed from several applications, even if they relate to different countries. Several applications may serve as a basis for claiming priority for a single claim. If priority is claimed on the basis of several applications, the time limits running from the priority date shall run from the earliest priority date.

Chapter 5

Claims, description, title and abstract

13.-(1) A patent application shall contain at least one claim. The claims shall define the matter for which protection is sought in terms of the technical features necessary to achieve the desired effect.

Claims shall contain an introduction including a title of the invention and a statement of the technical features which the invention has in common with the prior art. Claims shall, moreover, contain a characterising portion preceded by the words “characterised by” or the like stating the technical features which are novel and characteristic of the invention. A different wording of the claims may be used, if appropriate.

(2) The invention shall, as far as possible, be referred to one of the following categories: product, apparatus, process or use.

(3) A claim shall be clearly worded and shall not contain anything that is irrelevant to the invention specified in the claim or immaterial to the exclusive right applied for.

(4) In the introduction and in the characterising portion references to the drawings or photographs may be included between parentheses. General remarks such as “as described” or “as illustrated in the drawing” shall not be included in the claims. References in claims may, as an exception, be made directly to characteristics of micro-organisms and definition of measuring methods which are disclosed in the description as well as to shapes and line charts or the like which are shown in the drawings.

14.-(1) If a patent application contains several claims, they shall be presented together and be numbered consecutively.

(2) A claim may be independent or dependent. A claim is independent if it discloses the invention in question completely. A claim is dependent if it

relates to an embodiment of an invention disclosed in another claim of the application and therefore comprises all the features of the said claim.

(3) An independent claim may refer to one or several of the previous claims.

(4) One or more dependent claims may be linked to a previous claim. A dependent claim may be linked to several previous claims. Dependent claims shall begin with a reference to such previous claims and then state the additional features of the invention. Dependent claims shall be grouped immediately after the independent claim to which they are linked directly or through another dependent claim.

15.-(1) If an application comprises several inventions, it shall only be considered to be in accordance with section 10 of the Patents Act if there is a technical relationship among the inventions. The technical relationship shall manifest itself in the inventions involving, wholly or in part, the same or corresponding special technical features contributed by each invention over and beyond the prior art.

(2) The question as to whether there is such a technical relationship among a number of inventions shall be determined without regard to whether they are stated in separate claims or as alternatives within a single claim.

(3) Several independent claims within the same category shall only be included if there is a pronounced technical relationship and there are obvious difficulties in defining the inventions adequately in one and the same claim.

16.-(1) The description shall:

(i) Start by giving a brief and factual title of the invention.

(ii) Specify the technical field to which the invention relates and indicate the technology on which the invention is based, supplemented, if possible, by reference to known literature illustrating the said technology.

(iii) Disclose the technical problem and the solution comprised by the invention.

(iv) Illustrate the invention by means of examples or embodiments, referring to drawings or photographs, where appropriate, so that the claims may be deemed to be sufficiently substantiated.

(v) State expressly how the invention may be exploited commercially if that does not appear clearly from the nature of the invention. If the invention relates to a gene, it shall be disclosed expressly how a sequence or part of a sequence of the gene may be exploited commercially.

(vi) If the invention relates to a change of the genetic identity of an animal, indicate whether the invention may cause pain to the animal and, if so, whether the working of the invention will result in a considerable medical utility value to humans or animals.

(2) If the claims comprise several independent claims, the inventions according to those claims shall be disclosed in the description.

(3) The description of the invention shall only contain subject-matter which contributes to the understanding of the invention. In general such technical expressions, signs and symbols as are generally accepted in the field in question shall be employed. If newly coined terms or terms which are not in general use are

employed, their meanings shall be explained. Physical values shall be expressed in units which are recognised in international practice, preferably according to the metric system using SI units. In mathematical formulas symbols in general use shall be employed. In chemical formulas symbols, atomic weights and molecular or structural formulas in general use shall be employed.

(4) If the patent application comprises the deposit of a sample of biological material, cf. section 8a of the Patents Act, the application shall at the filing contain all such relevant information on the characteristics of the biological material as is known to the applicant.

17.-(1) If an application relates to or comprises sequences of nucleotides or amino acids, the description shall contain a sequence listing. The sequence listing shall be drawn up in accordance with the standard prescribed by the Patent and Trademark Office.

(2) The Patent and Trademark Office may decide that a sequence listing as referred to in subsection 1 shall also be filed in machine sensible form. When a sequence listing is filed in machine sensible form, the applicant shall file a declaration to the effect that the information in machine sensible form is identical with the sequence listing referred to in subsection 1.

18.-(1) Drawings and photographs shall show the details necessary for the understanding of the invention. Drawings and photographs shall not contain any text matter except a single word or a few

words when absolutely indispensable for the understanding.

(2) Drawings and photographs shall in other respects be presented in the form prescribed by the Patent and Trademark Office, cf. section 7(2).

19.-(1) The abstract of a patent application shall constitute a summary of the description and claims as presented in the basic documents, cf. sections 30(1) and 34(1). The abstract shall contain the title of the invention. It shall be drafted in such a way that the technical problem to which the invention relates, the principles of the solution of the problem through the invention and the principal use of the invention appear clearly therefrom.

(2) If an International Searching Authority or the European Patent Office has determined the content of the abstract of an international application or a converted European patent application, respectively, the said abstract shall be used.

Chapter 6

Deposits

20.-(1) Deposits under section 8a(1) of the Patents Act shall be made with an institution which is an international depositary authority under the Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure (the Budapest Treaty) done at Budapest on 28 April 1977 or with one of the other depositary institutions recognised by the European Patent Office.

(2) The deposit shall be made in accordance with the Budapest Treaty.

21.-(1) Deposits under section 8a(1) of the Patents Act shall be made at the latest on the date on which the application was filed. If a deposit of a sample of biological material has been made, the applicant shall within 16 months from the date of filing of the application or, if priority is claimed, from the date of priority submit information stating the institution with which the deposit has been made and the number which the institution has accorded to the deposited sample.

(2) If, prior to the expiry of the time limit referred to in subsection 1, the applicant requests that the files of the application be made available earlier than prescribed in section 22(1) and (2) of the Patents Act, the information referred to in subsection 1 above shall be submitted at the latest at the same time as the request.

(3) If a deposited sample has been transferred from one depositary institution to another under Rule 5.1 of the Regulations under the Budapest Treaty, the applicant shall as soon as possible after having received the receipt in respect of the transferred deposit notify the Patent and Trademark Office thereof and of the new number accorded to the deposited sample.

(4) In substantiation of the correctness of the information referred to in subsections 1 and 3, the Patent and Trademark Office may require the applicant to file a copy of the receipt which the depositary institution has issued with respect to the deposit.

22.-(1) A new deposit as referred to in section 8a(2) of the Patents Act shall be made in accordance with the provisions

of the Budapest Treaty for a new deposit. The new deposit shall be accompanied by a declaration from the depositor to the effect that the new deposited biological material is the same as that originally deposited.

(2) A new deposit shall be made within three months from the date on which the depositor received notification from the depositary institution to the effect that a sample from the previously deposited biological material cannot be furnished. If the institution has ceased to be an international depositary authority for the kind of biological material to which the deposit belonged, or if it has ceased to comply with its obligations under the Budapest Treaty, and the depositor has not received notification thereof within six months from the announcement of the event by the International Bureau, the new deposit may be made within three months from the said announcement. With respect to the depositary institutions accepted by the European Patent Office the time limits referred to in the 2nd sentence shall apply from the date of the corresponding announcement by the European Patent Office.

(3) The applicant shall within four months from the date of the new deposit notify the Patent and Trademark Office of the new deposit and of the new number accorded to the deposit. If the time limit referred to in section 21(1) or (2) expires later, the notification may be made before the expiry of that time limit.

(4) In substantiation of the correctness of the information referred to in subsection 3 the Patent and Trademark Office may require the applicant to file a copy of the

receipt which the depositary institution has issued with respect to the deposit.

23.-(1) A request under section 22(8), 1st sentence, of the Patents Act for the furnishing of a sample of deposited biological material shall be filed with the Patent and Trademark Office and be drawn up in accordance with Rule 11 of the Regulations under the Budapest Treaty.

(2) The person requesting the furnishing of a sample of biological material shall by a separate declaration undertake vis-à-vis the applicant or the proprietor of the patent not to make the sample available to any third party until the application has been finally decided on or, if the patent is granted, until the patent has ceased to have effect. Moreover, the person requesting the furnishing of a sample shall by a separate declaration undertake vis-à-vis the applicant to use the sample only for experimental purposes until the application has been finally decided on.

(3) Subsection 2 shall also apply as regards biological material derived from the sample which still exhibits the characteristics which are essential for the working of the invention.

24.-(1) A request under section 22(7) of the Patents Act to the effect that the furnishing of a sample of deposited biological material shall only be effected to an expert in the art shall be submitted to the Patent and Trademark Office not later than on the date on which the application is made available to the public under section 22 of the Patents Act.

(2) Any person determined by the Patent and Trademark Office to be qualified or

any person approved by the applicant in the individual case may be used as an expert.

(3) If the furnishing of a sample may only be effected to an expert in the art, cf. subsection 1, the request for a sample shall indicate the expert to be used. At the filing the request shall be accompanied by a declaration from the expert pursuant to section 23(2). In those cases the requester shall not be required to make any declaration himself.

25.- In the cases where a declaration has been made under sections 23 and 24, a sample derived from a furnished sample may be deposited for the purpose of a new patent application or a utility model application, if the deposit of the derived sample is required for that application.

26.-(1) If a request has been submitted for the furnishing of a sample, and if under the Patents Act or this Order there is nothing to prevent the furnishing of the sample, the Patent and Trademark Office shall issue a certificate to that effect. The Patent and Trademark Office shall send the request for the furnishing of a sample and the certificate to the depositary institution with which the sample is deposited. At the same time, the Patent and Trademark Office shall send a copy of the request and the certificate to the applicant or the proprietor of the patent.

(2) If the Patent and Trademark Office finds that a certificate as referred to in subsection 1 cannot be issued, the Patent and Trademark Office shall notify the person who has requested the furnishing of a sample accordingly.

Chapter 7

Publication and advertisement of applications available to the public

27-(1) When, prior to the grant of a patent, the files of a patent application are made available to the public under section 22 of the Patents Act, the abstract shall be published. The Patent and Trademark Office may also publish other parts of the application together with the abstract.

(2) The advertisement to be made when an application is made available to the public shall contain information about the number and classes, the date of filing and the effective date, if different from the date of filing, of the application, the title of the invention, the applicant's name or firm name and postal address and, if the applicant is represented by an agent, the agent's name or firm name and the inventor's name and postal address. If priority has been claimed, the advertisement shall contain information as to where the application serving as a basis for claiming priority was filed and the date of filing and the number of that application. If the application comprises the deposit of a sample of biological material, that shall be stated in the advertisement. If the applicant has requested under section 22(7) of the Patents Act that a sample shall be furnished only to an expert in the art, that shall also be advertised.

Part II

Examination and other processing of applications

Chapter 8

Amendment of patent applications

28-(1) A claim shall not be amended so as to contain subject-matter not disclosed in the basic documents, cf. sections 30 and 34(1). If a claim is amended by the addition of new definitions, the applicant shall at the same time state where the new definitions have their counterparts in the basic documents.

(2) After the Patent and Trademark Office has communicated its evaluation of the patentability on the basis of the performed novelty search, claims disclosing an invention which is outside the scope of what has been evaluated as patentable shall only be included in exceptional cases.

(3) Unless the Patent and Trademark Office allows otherwise, amendments of or additions to claims shall be effected by the filing of a new copy of the claims. That copy shall comprise all the maintained claims in consecutive order.

29-(1) The applicant may only make amendments of or additions to the description, drawings and photographs if they do not change the understanding of the claims.

(2) At the filing of new copies of the description the applicant shall submit a declaration stating where the description does not correspond word for word to a previously filed description.

30-(1) The basic documents of a Danish patent application shall consist of the description, including any drawings, photographs and sequence listing, as well as the claims drawn up in Danish or

English which were present at the filing of the application or on the date on which the application is deemed to have been filed, respectively. If such documents are not present on one of those dates, the basic documents shall consist of the description and the claims when they are filed in Danish or English. That shall only apply to the extent the contents of the documents in English or Danish appear clearly from the originally filed documents. If the Patent and Trademark Office has not required a translation pursuant to section 6(2), the documents drawn up in the language in question shall constitute the basic documents.

(2) The basic documents of a European patent application which is requested to be converted pursuant to section 88 of the Patents Act shall consist of the description, including any drawings, photographs and sequence listing, as well as the claims drawn up in Danish or English.

(3) The basic documents of an international application proceeded with pursuant to section 31 of the Patents Act shall consist of the description, including any drawings, photographs and sequence listing, as well as the claims drawn up in Danish or English.

(4) If an application is filed with a reference to a previous application under section 5(8), the basic documents shall consist of the filed copy or translation of the previous application.

Chapter 9

Division and excision

31- If several inventions are described in the basic documents, the applicant may

divide the application into several applications. At the request of the applicant a new application relating to an invention derived from the application from which it is divided out (the parent application) shall be deemed to have been filed at the date of filing of the parent application. That date shall be known as the effective date of the divisional application.

32.- If by addition to the description or the claims or in any other way an invention which does not appear from the basic documents has been disclosed in a patent application, a new application relating to that invention may be excised from the parent application and at the request of the applicant be deemed to have been filed on the date when the document disclosing the invention was received by the Patent and Trademark Office. That date shall be known as the effective date of the excised application.

33.-(1) If an application has resulted from division or excision, it shall be stated on which parts of the parent application the claims of the new application are based. Moreover, the applicant shall state in the parent application that division or excision has been effected.

(2) Division or excision may be effected as long as a final decision regarding the parent application has not been taken. Thus, division or excision shall be effected before a patent has been granted in the parent application pursuant to section 20(1) of the Patents Act. If the parent application has been refused or shelved, division and excision may be

effected until the time limit applying to appeal or resumption expires, irrespective of whether an appeal is filed or the examination and other processing of the application are resumed.

(3) If, however, division or excision is effected after a notification concerning the approval for the grant of a patent has been sent in the parent application, the limitations as to content following from the provision in section 19(2) of the Patents Act shall apply.

34.-(1) In the event of division or excision, the description, including any drawings, photographs and sequence listing, as well as the claims filed in connection with the new application shall be regarded as basic documents.

(2) A new application shall only be regarded as resulting from division or excision if that appears from the new application at its filing. The date of filing and the number of the original application shall be stated in applications resulting from division or excision.

Chapter 10

Examination as to patentability

35.-(1) In examining whether the conditions laid down in section 2 of the Patents Act for the grant of a patent are complied with the Patent and Trademark Office shall consider everything that comes to its attention.

(2) For the purpose of the examination and other processing of the application the Patent and Trademark Office may consult experts.

(3) The Patent and Trademark Office may require the applicant to submit a

model, sample or the like or to have investigations or experiments carried out.

36.- If, during the examination and other processing of a patent application, information of importance to the examination of the application is filed, the applicant shall be notified thereof. The person who has submitted such information shall, where relevant, be notified of the opportunity to file an opposition if and when a patent is granted.

37.-(1) If the applicant wishes the search referred to in section 9 of the Patents Act to be performed, he shall, within three months from the date of filing of the application or from the date on which the application is deemed to have been filed, file a request to that effect and pay the fee prescribed by the Searching Authority and a fee for the handling of the application by the Patent and Trademark Office.

(2) If the applicant wishes the search to be performed by a specific international authority out of several possible authorities, that shall be specified in the request.

(3) If the patent application is not drawn up in a language accepted by the Searching Authority, the request shall be accompanied by a translation of the application into a language accepted by the Searching Authority. If the Nordic Patent Institute is stated in the request, the application shall be translated into Danish, English, Icelandic, Norwegian or Swedish. If the Swedish Patent Office is stated in the request, the application shall be translated into Danish, Swedish or English, and if the European Patent

Office is stated in the request, the application shall be translated into English, French or German.

(4) If at the expiry of the time limit referred to in subsection 1 the patent application and the prescribed translation do not comply with the requirements as to form which apply to international applications, the request for a search under section 9 of the Patents Act shall be deemed to be withdrawn.

38.-(1) If the applicant has applied for a patent for the same invention abroad, the Patent and Trademark Office may, with the limitation specified in section 69(3), 2nd sentence, of the Patents Act, require the applicant to furnish information about any communication from the patent institution in question concerning the novelty of the invention or its patentability in other respects.

(2) The Patent and Trademark Office may require the applicant to furnish information stating the patent institutions with which the applicant has applied for a patent for the invention and to file a copy of the communications with the said patent institutions as regards the novelty of the invention or its patentability in other respects. If the applicant has not received any such communication, the applicant shall submit a declaration to that effect.

(3) In the cases where the applicant has applied for a patent in Denmark and subsequently applies for a patent for the same invention abroad, the Patent and Trademark Office may at the request of the patent institution in question furnish that institution with information about the examination and other processing of

the patent application, including information about the novelty of the invention or its patentability in other respects.

Part III

Grant of patents, etc.

Chapter 11

Grant of patents

39.-(1) If the Patent and Trademark Office finds that a patent may be granted, and if it has not already been established that the applicant approves the text in which the patent may be granted, subsections 2 and 3 shall apply.

(2) The Patent and Trademark Office shall invite the applicant to file his observations on the text in which patent may be granted within two months. If the applicant approves the text, section 19 of the Patents Act shall apply.

(3) If the applicant disapproves of the text, the examination and other processing of the application may be continued. If the Patent and Trademark Office finds no reason to continue the examination and other processing, the application shall be refused.

40.-(1) If, at the notification to the applicant under section 19(1) of the Patents Act, documents suitable for reproduction are not available, the applicant shall file such documents within two months after the notification has been sent.

(2) The documents for reproduction shall be in conformity with the documents accepted for the grant of the patent. The applicant shall submit a declaration to that effect.

41.- Postponement of the grant of a patent shall only be permitted in the cases where the decision to grant the patent has been made before the application was made available to the public pursuant to section 22(2) and (3) of the Patents Act. If so, the grant of the patent may at the request of the applicant be postponed until the time when the application is made available to the public pursuant to the said provisions.

42.- The Patent and Trademark Office shall issue a patent specification comprising the description, including any drawings, photographs and sequence listing, as well as the claims and the abstract pursuant to section 20 of the Patents Act. The patent specification shall contain information about:

- (i) The date of the grant of the patent.
- (ii) The number of the application and the registration number of the patent.
- (iii) The classes of the patent.
- (iv) The name or firm name and postal address of the proprietor of the patent.
- (v) If the proprietor of the patent is represented by an agent, the name or firm name and postal address of the agent.
- (vi) The name and postal address of the inventor.
- (vii) The title of the patent.
- (viii) The date of filing of the application:

(a) Danish patent application: The date of filing of the application and, if the effective date is different from the date of filing, also the effective date.

(b) International patent application: The international filing date and the

date on which the application was proceeded with under section 31 of the Patents Act or the date on which the application is deemed to have been filed under section 38(3) of the Patents Act as well as the number of the international application.

(c) Converted European patent application: The number of the European patent application and its date of filing under the European Patent Convention as well as the date on which the European patent application was converted into a Danish patent application.

(ix) Information as to where the application serving as a basis for claiming priority was filed and the date of filing and number of that application, if priority is claimed under section 6 of the Patents Act.

(x) The number of the parent application, if the application is resulting from division or excision.

(xi) The date on which the files of the application were made available to the public.

(xii) If the patent comprises the deposit of a sample of biological material: Information to that effect.

(xiii) Cited documents.

43.- The advertisement of the grant of the patent to be effected under section 20 of the Patents Act shall contain the data to be indicated in the patent specification pursuant to section 42 with the exception, however, of cited documents.

The Register of Patents

44.- The Patent and Trademark Office shall keep a register of the patents applied for and granted in this country and of European patent applications under section 83 of the Patents Act and European patents having effect in this country.

45.- With respect to patents applied for and patents granted in this country the following data shall be entered in the Register of Patents:

- (i) The number of the application and the registration number of the patent, if the patent has been granted.
- (ii) The date of the grant of the patent, if the patent has been granted.
- (iii) The classes of the patent according to the International Patent Classification System.
- (iv) The name or firm name and postal address of the applicant or the proprietor of the patent.
- (v) If the applicant or the proprietor of the patent is represented by an agent, the name or firm name and postal address of the agent.
- (vi) The name and postal address of the inventor.
- (vii) The title of the invention.
- (viii) The date of filing of the application:
 - (a) Danish patent application: The date of filing of the application and, if the effective date is different from the date of filing, also the effective date.
 - (b) International patent application: The international filing date and the date on which the application was

proceeded with under section 31 of the Patents Act or the date on which the application is deemed to have been filed under section 38(3) of the Patents Act as well as the number of the international application.

(c) Converted European patent application: The number of the European patent application and its date of filing under the European Patent Convention as well as the date on which the European patent application was converted into a Danish patent application.

(ix) Information as to where the application serving as a basis for claiming priority was filed and the date of filing and number of that application, if priority is claimed under section 6 of the Patents Act.

(x) The number of the parent application, if the patent is applied for or granted on the basis of an application having resulted from division or excision.

(xi) If new applications have resulted from division or excision: Information to that effect stating the numbers of the applications in question.

(xii) If a utility model application has been made on the basis of the patent application pursuant to section 12 of the Utility Models Act: Information to that effect and the number of the utility model application.

(xiii) If the patent comprises the deposit of a sample of biological material: Information stating the institution with which the sample is deposited as well as the number accorded to the deposited sample by the institution.

(xiv) The date on which the files of the application were made available to the public.

(xv) The date on which the grant of the patent was advertised under section 20 of the Patents Act.

46.-(1) With respect to European patent applications under section 83 of the Patents Act and European patents with effect in Denmark under section 77 of the Patents Act the following data shall be entered in the Register of Patents:

(i) data pursuant to section 42(i), (iii) to (vii), (ix), (xi) and (xiii) to (xiv),

(ii) the date on which the European Patent Office has published the grant of the patent, if the patent has been granted,

(iii) the date on which the text and the fee under section 77(1) and (2) of the Patents Act were received and the date on which the advertisement thereof was effected, and

(iv) the date of filing of the European patent application and, if the application is a European divisional application, the date of filing of the divisional application.

(2) If the European Patent Office has published its decision to maintain a European patent designating Denmark in amended form, the date of that publication shall be entered in the Register. If the proprietor of the patent does not file an amended text or translation and does not pay the fee under section 77(1) of the Patents Act, a notification to that effect shall be entered in the Register.

(3) If the European Patent Office has restricted or revoked a European patent

designating Denmark, an entry to that effect shall be made in the Register.

(4) If the proprietor of the patent files a corrected text and pays the fee under section 86(1) of the Patents Act, the date on which that occurred and the date on which the correction was advertised shall be entered in the Register.

Other entries in the Register of Patents

47.- Moreover, the following data shall be entered in the Register of Patents:

(i) notification of institution of proceedings under section 63 of the Patents Act,

(ii) notification of receipt of a court decision under section 65 of the Patents Act,

(iii) notification of transfer, licence, pledging, execution, insolvency or compulsory licence under section 44 of the Patents Act, and

(iv) the date on which the patent has lapsed under section 51 of the Patents Act.

Part IV

Opposition, administrative re-examination, termination, etc.

Chapter 13

Examination of oppositions

48.-(1) Under section 21 of the Patents Act any person shall be entitled to file an opposition against a granted patent. The opposition shall be filed with the Patent and Trademark Office within nine months from the advertisement of the grant of the patent and shall include:

(i) the opponent's name or firm name and postal address,

(ii) the registration number of the patent against which the opposition is filed, the name or firm name of the proprietor of the patent and the title of the invention,

(iii) the specific grounds on which the opposition is based as well as a complete account of all the facts, evidence and arguments presented in support of those grounds, and

(iv) if the opponent is represented by an agent, the name or firm name and postal address of the agent.

(2) The opposition shall be accompanied by the prescribed fee.

49.-(1) If the opposition does not comply with the provision of section 48(2), or if no grounds are stated before the expiry of the opposition period, the opposition shall be rejected.

(2) If the opposition after the expiry of the opposition period does not comply with the provisions of section 48(1)(i) to (iv), the opponent shall be invited to remedy the deficiency within one month. If the opposition is not corrected in time, it shall be rejected.

50.- The Patent and Trademark Office may, if so requested by the opponent, decide that the proprietor of the patent shall file a translation of the entire patent specification into Danish if the patent specification has been published in English with claims in Danish under section 19(3) of the Patents Act.

51.- The Patent and Trademark Office shall notify the proprietor of the patent of the opposition and shall give the proprietor an opportunity to file his observations on the opposition and, where appropriate, to file the claims and the description in amended form within a time limit of six months. If more than one opposition has been filed against a granted patent, the opponents shall be informed thereof.

52.- The Patent and Trademark Office may decide to revoke the patent or to maintain the patent unamended. Moreover, the Patent and Trademark Office may decide to maintain the patent in amended form, provided that the proprietor of the patent so agrees. The parties shall be notified of the decision of the Patent and Trademark Office.

53.-(1) If the Patent and Trademark Office finds that the patent may be maintained in amended form, the parties shall be notified thereof. At the same time the proprietor of the patent shall be invited to file an amended text within two months. If the proprietor of the patent does not file an amended text before the expiry of the time limit, the patent shall be revoked. If the proprietor of the patent files an amended text, the Patent and Trademark Office shall give the opponent an opportunity to file his observations on the amended text before the Patent and Trademark Office decides whether the patent may be maintained in amended form or shall be revoked. If the

Office decides that the patent may be maintained in amended form, the decision shall state the text in which the patent is maintained.

(2) When the decision to maintain the patent in amended form has become final, the proprietor of the patent shall be invited within two months to pay the fee for publication of a new patent specification. If the proprietor of the patent does not pay the publication fee, the patent shall be revoked.

Publication and advertisement, etc. with respect to oppositions

54.-(1) The filing of the opposition shall be entered in the Register of Patents and advertised in accordance with subsection 3.

(2) The Patent and Trademark Office shall advertise the decision on the opposition. When the decision is final, it shall be entered in the Register of Patents. When the fee has been paid pursuant to section 53(2), the Patent and Trademark Office shall issue a new patent specification with the description, including any drawings, photographs and sequence listing, as well as the claims and the abstract in the amended form. The patent specification shall include the information stated in section 42. Section 7(2) shall apply *mutatis mutandis*.

(3) The advertisement of the filing of an opposition and of the decision thereon shall state the name or firm name of the proprietor of the patent, the date of filing and the number of the application, the registration number and the classes of the patent, the title of the invention and the

date on which the patent was granted. The advertisement of the filing of an opposition shall also state the name or firm name of the opponent.

Chapter 14

Administrative re-examination

55-(1) Under section 53b of the Patents Act any person shall be entitled to request the re-examination of a patent. A request for administrative re-examination shall be filed with the Patent and Trademark Office and shall include:

- (i) the name or firm name and postal address of the person requesting the re-examination,
- (ii) the registration number of the patent with respect to which re-examination is requested, as well as the name or firm name of the proprietor of the patent and the title of the invention,
- (iii) the specific grounds on which the request is based as well as a complete account of all the facts, evidence and arguments presented in support of those grounds, or, if the request is made by the proprietor of the patent, the desired amendments,
- (iv) if the person requesting the re-examination is represented by an agent, the name or firm name and postal address of the agent, and
- (v) if licensees are entered in the Register of Patents, documentation to prove that such licensees have been notified that re-examination has been requested.

(2) The request for re-examination shall be accompanied by the prescribed fee.

56.-(1) If the request for re-examination does not comply with the provisions of section 53b(2) of the Patents Act and section 55(2) of this Order, the request shall be rejected.

(2) If the request for re-examination does not comply with the provisions of section 55(1), the person having made the request shall be invited to remedy the deficiencies within one month. If the request is not corrected in due time, it shall be rejected.

57.- The Patent and Trademark Office may, if so requested by the person requesting the re-examination, decide that the proprietor of the patent shall file a translation of the entire patent specification into Danish if the patent specification has been published in English with claims in Danish pursuant to section 19(3) of the Patents Act.

Request for re-examination by persons other than the proprietor of the patent

58.-(1) The Patent and Trademark Office shall notify the proprietor of the patent of the request for re-examination and shall give the proprietor an opportunity to file his observations thereon and, where appropriate, to file the claims and the description in amended form within a time limit of six months.

(2) The Patent and Trademark Office may decide that the patent shall be revoked or that the patent shall be maintained unamended. Moreover, the

Office may decide that the patent shall be maintained in amended form if the proprietor of the patent so agrees. The parties shall be notified of the decision of the Patent and Trademark Office.

(3) The examination by the Patent and Trademark Office shall be made on the basis of the material and the grounds produced in connection with the request for re-examination.

59.-(1) If the Patent and Trademark Office finds that the patent may be maintained in amended form, the parties shall be notified thereof. At the same time the proprietor of the patent shall be invited to file an amended text within two months. If the proprietor of the patent does not file an amended text before the expiry of the time limit, the patent shall be revoked. If the proprietor of the patent files an amended text, the Patent and Trademark Office shall give the person having requested the re-examination of the patent an opportunity to file his observations on the amended text before the Patent and Trademark Office decides whether the patent may be maintained in amended form or shall be revoked. If the Office decides that the patent may be maintained in amended form, the decision shall state the text in which the patent is maintained.

(2) When the decision to maintain the patent in amended form has become final, the proprietor of the patent shall be invited within two months to pay the fee for publication of a new patent specification. If the proprietor of the

patent does not pay the publication fee, the patent shall be revoked.

Request for re-examination by the proprietor of the patent

60.-(1) If the proprietor of the patent himself requests that his patent be restricted, the Patent and Trademark Office shall examine whether the grounds for revocation referred to in section 52(1) of the Patents Act prejudice the desired amendment of the patent. If the proprietor of the patent has produced any material in relation to the request for re-examination, that material shall be included in the examination.

(2) If the patent can be amended as desired, the proprietor of the patent shall be notified thereof. He shall then within two months file an amended text and pay the fee for publication. If the fee is not paid in due time, the patent shall cease to have effect.

(3) If the patent cannot be amended as desired, the request shall be refused, and the patent shall be maintained unamended.

Publication and advertisement, etc. with respect to administrative re-examination

61.-(1) The filing of a request for administrative re-examination shall be entered in the Register of Patents and advertised in accordance with subsection 3.

(2) The Patent and Trademark Office shall advertise the decision on the administrative re-examination when the decision has become final. At the same

time the decision shall be entered in the Register of Patents. When the fee has been paid pursuant to section 59(2) or section 60(2), the Patent and Trademark Office shall issue a new patent specification with the description, including any drawings, photographs and sequence listing, as well as the claims and the abstract in the amended form. The patent specification shall contain the information stated in section 42. Section 7(2) shall apply *mutatis mutandis*.

(3) The advertisement of the filing of a request for administrative re-examination and of the decision thereon shall state the name or firm name of the proprietor of the patent, the date of filing and the number of the application, the registration number and the classes of the patent, the title of the invention and the date on which the patent was granted. The advertisement of the filing of a request for administrative re-examination shall also state the name or firm name of the person having requested the re-examination.

Chapter 15

Request for termination of a patent

62.-(1) Any person shall be entitled to request the Patent and Trademark Office to decide whether a patent shall be terminated entirely or in part pursuant to section 96 of the Patents Act. The request shall be filed with the Patent and Trademark Office and shall include:

(i) the name or firm name and postal address of the person requesting the termination of the patent,

(ii) the registration number of the patent which shall cease to have effect as well as the name of the proprietor of the patent and the title of the invention,

(iii) the number of the European patent for Denmark which is considered to cover the same invention as the patent,

(iv) if the person requesting the termination of a patent is represented by an agent, the name or firm name and postal address of the agent, and

(v) if licensees are entered in the Register of Patents, documentation to prove that such licensees have been notified that termination of the patent has been requested.

(2) The request for termination shall be accompanied by the prescribed fee.

63.-(1) If the request for termination does not comply with the provision of section 62(2), the request shall be rejected.

(2) If the request for termination does not comply with the provision in section 62(1), the person having made the request shall be invited to remedy the deficiencies within one month. If the request is not corrected in due time, it shall be rejected.

Request for termination by persons other than the proprietor of the patent

64.-(1) If the request is filed by persons other than the proprietor of the patent, the Patent and Trademark Office shall notify the proprietor of the patent of the request for termination and shall give the

proprietor an opportunity to file his observations on the request and, where appropriate, to file the claims and the description in amended form within a time limit of six months.

(2) The Patent and Trademark Office may decide that the patent shall be revoked or that the patent shall be maintained unamended. Moreover, the Office may decide that the patent shall be maintained in amended form if the proprietor of the patent so agrees. The parties shall be notified of the decision of the Patent and Trademark Office.

(3) The examination by the Patent and Trademark Office shall be made on the basis of the material and the grounds produced in connection with the request for termination.

65.-(1) If the Patent and Trademark Office finds that the national patent may be maintained in amended form, the parties shall be notified thereof. At the same time the proprietor of the patent shall be invited to file an amended text within two months. If the proprietor of the patent does not file an amended text before the expiry of the time limit, the patent shall be declared to have ceased to have effect. If the proprietor of the patent files an amended text, the Patent and Trademark Office shall give the person having requested the termination of the patent an opportunity to file his observations on the amended text before the Patent and Trademark Office decides whether the patent may be maintained in amended form or shall be revoked. If the Office decides that the patent may be

maintained in amended form, the decision shall state the text in which the patent is maintained.

(2) When the decision to maintain the patent in amended form has become final, the proprietor of the patent shall be invited within two months to pay the fee for publication of a new patent specification. If the proprietor of the patent does not pay the publication fee, the patent shall be declared to have ceased to have effect.

Request for termination by the proprietor of the patent

66.- If the request for termination is made by the proprietor of the patent himself, sections 62 to 65 shall apply with the modifications following from the proprietor of the patent being the only party to the case.

Publication and advertisement, etc. with respect to requests for termination

67.-(1) The filing of a request for termination shall be entered in the Register of Patents and advertised in accordance with subsection 3.

(2) The Patent and Trademark Office shall advertise the decision on a request for termination when the decision has become final. At the same time the decision shall be entered in the Register of Patents. When the fee has been paid pursuant to section 65(2), the Patent and Trademark Office shall issue a new patent specification with the description, including any drawings, photographs and sequence listing, as well as the claims

and the abstract in amended form. The patent specification shall contain the information stated in section 42. Section 7(2) shall apply *mutatis mutandis*.

(3) The advertisement of the filing of a request for termination and of the decision thereon shall with respect to the national patent as well as to the corresponding European patent state the name or firm name of the proprietor of the patent, the date of filing and the number of the application, the registration number and the classes of the patent, the title of the invention as well as the date on which the patent was granted and, where appropriate, the date from which the national patent has ceased to have effect or has been maintained in amended form. The advertisement of the filing of a request for termination shall also state the name or firm name of the person having requested the termination of the patent.

Court decisions on revocation, etc.

68.-(1) If a patent is revoked by a court decision pursuant to section 52 of the Patents Act, the Patent and Trademark Office shall make an advertisement to that effect, cf. section 55 of the Patents Act.

(2) If a patent is maintained in amended form by a court decision, the Patent and Trademark Office shall issue a new patent specification. Moreover, subsection 1 shall apply.

Part V

**Supplementary protection certificates
for medicinal products and plant
protection products**

Chapter 16

*Applications for certificates and the
Register of Certificates, etc.*

Definitions

69.-(1) A “certificate” means a supplementary protection certificate under the Regulations concerning supplementary protection certificates for medicinal products or supplementary protection certificates for plant protection products.

(2) “Regulations” mean:

- (i) Regulation (EC) No. 469/2009 of the European Parliament and the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products (codified version) and
- (ii) Regulation (EC) No. 1610/96 of the European Parliament and the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products.

*Applications for certificates and their
examination and other processing, etc.*

70.-(1) Applications for certificates and applications for an extension of the duration of certificates for medicinal

products for paediatric use shall be filed with the Patent and Trademark Office.

(2) The application shall contain the information stated in Article 8 of the Regulations. If a certificate is applied for by several persons jointly, and they are not represented by an agent, the application shall, moreover, state whether any of the applicants shall be authorised to receive communications from the Patent and Trademark Office on behalf of all the applicants. If no recipient is stated, the applicant stated first shall receive communications from the Patent and Trademark Office on behalf of all the applicants.

(3) In the application for a certificate the applicant shall give information about the identity of the product.

(4) The application fee shall accompany the application.

(5) The number and the date of filing of the application shall be advertised together with the information referred to in Article 9(2) of the Regulations.

(6) The date of the signature of the authorisation to place the product on the market by the Public Health Authorities shall be regarded as the date of the grant of the authorisation to place the product on the market referred to in Article 8(1)(a)(iv), and Article 9(2)(d) of the Regulations.

71.- The application shall be drawn up in Danish or English. If a document accompanying the application is drawn up in any other language, the Patent and Trademark Office may require that a

translation into Danish or English be filed within a time limit to be prescribed by the Office. It may be required that the translation be certified by a translator or in another specified prescribed manner.

72.- An application for a certificate shall not be amended in such a way that the certificate is applied for with respect to another basic patent or with respect to another authorisation to place the product on the market than that referred to in Article 3(1)(b) of the Regulations.

73.-(1) The Patent and Trademark Office shall consider everything that comes to its attention in the examination of the application.

(2) The Patent and Trademark Office shall not verify whether the conditions of Article 3(d) of the Regulations are complied with.

74.- The rules of section 15(2) and (3) and section 16 of the Patents Act shall apply to time limits under Article 10(3) of the Regulations. The prescribed fee shall be paid for resumption.

75.-(1) The advertisement concerning the grant of a certificate pursuant to Article 11(1) of the Regulations shall, in addition to the information stated therein, also contain information about the number and the date of filing of the certificate application as well as the registration number of the certificate. The same shall apply to the advertisement concerning the grant of an extension of the duration

of a certificate for medicinal products for paediatric use.

(2) A certificate shall contain the information referred to in subsection 1.

(3) If an application for a certificate or for an extension of the duration of a certificate for medicinal products for paediatric use is refused or finally shelved, that shall be advertised together with the information referred to in section 70(5).

The Register of Certificates, etc.

76.-(1) The Patent and Trademark Office shall keep a register of applications filed for certificates and for extension of certificates as well as certificates granted and extensions of certificates granted. The following information shall be entered in the Register of Certificates:

- (i) the name and address of the applicant or the holder,
- (ii) the number of the basic patent,
- (iii) the title of the invention,
- (iv) the number of the authorisation to place the product on the market referred to in Article 3(b) of the Regulation and the date on which it was granted as well as the product identified in the authorisation,
- (v) the number and the date of the first authorisation to place the product on the market in the European Union, if such an authorisation is available,
- (vi) the number and the date of filing of the application for the

certificate and the registration number of the certificate, if the certificate has been granted, and

- (vii) if the applicant or the holder is represented by an agent, the name or firm name and postal address of the agent.

(2) Information to be entered in the Register of Patents pursuant to section 42 shall also be entered in the Register of Certificates.

(3) Applications for certificates shall be available to the public.

Payment of renewal fees

77.-(1) A renewal fee shall be paid for each year commenced after the expiry of the term of the basic patent.

(2) The renewal fee shall fall due on the last day of the month in which the fee year begins. The renewal fee may not be paid earlier than three months before the due date.

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

(4) The Patent and Trademark Office shall not be responsible for any loss of rights as a consequence of failure to collect renewal fees.

Chapter 17

Administrative re-examination of certificates, etc.

Administrative re-examination, cf. Article 15 of the Regulations

78.-(1) Any person shall be entitled to request the re-examination of a certificate. A request for administrative re-examination shall be filed with the Patent and Trademark Office and shall include:

(i) the name or firm name and postal address of the person requesting the re-examination,

(ii) the registration number of the certificate for which re-examination is requested, and the name or firm name of the holder of the certificate,

(iii) all the grounds in Article 15(1) of the Regulations on which the request is based, and a complete account of all the facts, evidence and arguments presented in support of those grounds,

(iv) if the person requesting the re-examination is represented by an agent, the name or firm name and postal address of the agent, and

(v) if licensees are entered in the Register of Certificates, documentation to prove that such licensees have been notified that re-examination has been requested.

(2) If the request is based on grounds stated in Article 15(1)(c) of the Regulations, re-examination of the basic patent shall be requested at the same time, cf. section 80.

(3) The request for re-examination shall be accompanied by the prescribed fee.

(4) If the request for re-examination does not comply with the provision of subsection 3, the request shall be rejected.

(5) If the request for re-examination does not comply with the provisions of subsection 1 or subsection 2, the person having made the request shall be invited to remedy the deficiencies within one month. If the request is not corrected in due time, it shall be rejected.

79.-(1) If a request for re-examination of the certificate is based on the grounds stated in Article 15(1)(a) or (b) of the Regulations, subsections 2 and 3 shall apply.

(2) The Patent and Trademark Office shall notify the holder of the certificate of the request for re-examination and shall give the holder of the certificate an opportunity to file his observations thereon within a time limit of six months.

(3) The Patent and Trademark Office may decide that the certificate shall be revoked or that the certificate shall be maintained unamended. The examination by the Patent and Trademark Office shall be made on the basis of the material and the grounds produced in connection with the request for re-examination. The parties shall be notified of the decision of the Patent and Trademark Office.

80.-(1) If a request for re-examination of the certificate is based on the grounds stated in Article 15(1)(c) of the Regulations, a request for re-examination of the basic patent shall also be filed, cf., however, subsections 3 to 5. The request for re-examination of the basic patent shall state that a re-examination of the certificate has also been requested.

(2) The request for re-examination of the basic patent shall be examined pursuant to the rules of sections 55 to 60. In the notification to the proprietor of the patent under section 58, he shall be informed that re-examination of the certificate has also been requested. The examination of the request for re-examination of the certificate shall be suspended until the re-examination of the basic patent has been finally settled. After that section 81 shall apply.

(3) If the request is based on the sole ground that the product is no longer covered by the claims of the basic patent, the Patent and Trademark Office shall make its decision in accordance with section 81(2) without any further examination of the basic patent.

(4) If the period prescribed for the filing of oppositions against the basic patent has not expired, or if an opposition is filed against the basic patent, the Patent and Trademark Office shall suspend the examination of the request for re-examination of the certificate until the opposition period has expired or until the opposition has been finally decided on. After that section 81 shall apply.

(5) If re-examination or termination of the basic patent has been requested prior to the request for re-examination of the certificate, the examination of the request for re-examination of the certificate shall be suspended until a final decision has been made concerning the basic patent. After that section 81 shall apply.

81.-(1) If a final decision has been made to revoke the basic patent or to declare it to have ceased to have effect, the Patent and Trademark Office shall revoke the certificate under Article 15 of the Regulations.

(2) If a final decision has been made to maintain the basic patent in amended form, the Patent and Trademark Office shall, after having given the parties an opportunity to file their observations, decide whether the product for which the certificate has been granted is still protected by the basic patent. If that is not the case, the certificate shall be revoked.

(3) If the request for re-examination of the certificate cannot be complied with, it shall be refused, and the certificate shall be maintained.

Administrative re-examination of the duration of the certificate

82.-(1) Any person shall be entitled, against payment of the prescribed fee, to file a request with the Patent and Trademark Office for re-examination of the duration calculated for the certificate.

(2) Section 78 shall apply, provided that in the case of a request for re-examination of the duration of the certificate reference shall be made to grounds in Article 13 of the Regulations.

(3) If a request for re-examination has been filed by another person than the holder of the certificate, the Patent and Trademark Office shall notify the holder of the certificate and give him an opportunity to file his observations on the

request within a time limit of two months.

(4) The Patent and Trademark Office shall decide whether the request for re-examination may be complied with. If the request cannot be complied with, it shall be refused. If the request can be complied with, the Patent and Trademark Office shall change the duration.

Administrative re-examination of the extension of the duration of a certificate, cf. Article 16 of Regulation No. 469/2009 of 6 May 2009 concerning the supplementary protection certificate for medicinal products

83.- Sections 78 to 82 shall apply *mutatis mutandis* to the extension of the duration of a certificate for medicinal products for paediatric use under Article 16 of Regulation No. 469/2009 of the European Parliament and the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products.

Advertisement and entry in the Register of Certificates concerning re-examination

84.-(1) The filing of a request for administrative re-examination shall be entered in the Register of Certificates and advertised in accordance with subsection 3.

(2) The Patent and Trademark Office shall advertise the decision on the administrative re-examination when the decision has become final. At the same

time the decision shall be entered in the Register of Certificates.

(3) The advertisement concerning the filing of and the decision on a request for re-examination shall state the name or firm name of the holder of the certificate, the number and date of filing of the application, the registration number of the certificate, the number of the basic patent, the title of the invention and the duration of the certificate. The advertisement of the filing of a request for re-examination shall also state the name or firm name of the person who has requested the re-examination.

Re-establishment of rights

85.-(1) The provisions of section 72 of the Patents Act shall apply to loss of rights as a consequence of failure to comply with time limits prescribed in the Regulations. Re-establishment of rights may also be granted when a certificate has lapsed under the provisions of Article 14(c) or (d) of the Regulations.

(2) The request for re-establishment of rights pursuant to subsection 1 shall be filed with the Patent and Trademark Office and shall be accompanied by the prescribed fee.

(3) When a request under subsection 1 has been complied with, that shall be advertised.

Part VI

International applications and European applications and patents

Chapter 18

Receipt of international patent applications, etc.

86.- The Patent and Trademark Office shall be the receiving Office for international patent applications from applicants who are Danish nationals and applicants who are residents of Denmark or have a commercial establishment in Denmark or who are legal entities recognised according to Danish law. That shall also apply if an international application is filed by two or more applicants and at least one of the applicants complies with the said conditions.

87.-(1) In its capacity of receiving Office the Patent and Trademark Office shall receive, check and transmit international applications in accordance with the Patent Cooperation Treaty and its Regulations.

(2) The applicant shall pay the following fees to the Patent and Trademark Office in its capacity of receiving Office within one month from the receipt of the application:

- (i) the international filing fee referred to in Rule 15.1 of the Regulations under the Patent Cooperation Treaty,
- (ii) the search fee referred to in Rule 16.1 of the said Regulations, and
- (iii) the fee for the handling of the application by the Patent and Trademark Office as receiving Office (the transmittal fee) referred to in Rule 14.1 of the said

Regulations and in section 102 of the Patents Act.

(3) If any of the fees referred to in subsection 2 has not been paid in due time or at the expiry of the time limit has been paid in an insufficient amount, Rule 16bis of the said Regulations shall apply.

88.-(1) The applicant may choose whether the Nordic Patent Institute, the Swedish Patent Office or the European Patent Office shall be the International Searching Authority with respect to the applications referred to in section 86. The application may be filed in Danish, Swedish, Norwegian, Icelandic, German, French or English. The Nordic Patent Institute will accept applications in Danish, English, Icelandic, Norwegian or Swedish. The Swedish Patent Office will accept applications in Danish, Swedish, Norwegian or English. The European Patent Office will accept applications in English, German or French. The request as such shall, however, be in the language in which the application is to be published later on.

(2) If the application is not drawn up in any of the languages accepted by the chosen Searching Authority, cf. subsection 1, a translation into such a language shall be filed with the Patent and Trademark Office within one month from the date of receipt in accordance with Rule 12.3 of the Regulations under the Patent Cooperation Treaty.

(3) If the application is filed in a language which is not a language of publication pursuant to Rule 48.3 of the Regulations under the Patent

Cooperation Treaty, and if no translation is required pursuant to subsection 2, the applicant shall file a translation of the application into English, German or French with the Patent and Trademark Office within 14 months from the date of priority.

89.- Provided that the international application is not comprised by the Secret Patents Act, the Patent and Trademark Office shall, in accordance with the Patent Cooperation Treaty and its Regulations, transmit the application to the International Bureau. The application shall not be available to the public in the Patent and Trademark Office.

Chapter 19

Proceeding with international patent applications

90.-(1) If an international patent application has been proceeded with under section 31 of the Patents Act on the basis of documents drawn up in English, and the application has been subject to a novelty search and an examination as to patentability on the basis of those documents, the claims shall be filed in Danish when the Patent and Trademark Office has concluded that a patent may be granted. The description, including any drawings, photographs and sequence listing, as well as the abstract shall be available either in Danish or in English.

(2) The Patent and Trademark Office may limit the obligation to file a translation or a copy of the application pursuant to section 31 of the Patents Act in the cases where only part of an international application is proceeded with in this country. If a translation or a copy of only parts of an international application is filed, the applicant shall submit a declaration from which it appears which parts of the international application are not comprised by the translation or copy. The declaration shall also state the reason for the omission.

91.-(1) The time limit under section 34 of the Patents Act shall be 35 months from the international filing date or, if priority is claimed, from the priority date.

(2) Observations on the novelty search of an international patent application shall not be made prior to the expiry of the time limit in subsection 1, unless the applicant gives his consent thereto.

92.- The time limit for presenting a request for a review under section 38(2) of the Patents Act shall expire two months after the date on which the receiving Office or the International Bureau has notified the applicant of such a decision as referred to in section 38(1) of the Act.

Chapter 20

European patent applications and patents, etc.

93.-(1) If a European patent application is filed with the Patent and Trademark

Office, the Office shall mark the documents making up the application with the date of filing, issue a receipt for the documents and notify the European Patent Office of the filing, cf. Rule 35(2) and (3) of the Implementing Regulations to the European Patent Convention.

(2) Provided that the European application is not comprised by the Secret Patents Act, the Patent and Trademark Office shall, in accordance with Article 77 of the European Patent Convention and its Implementing Regulations, forward the application to the European Patent Office.

94.-(1) If the Patent and Trademark Office has been the Receiving Office for an application for a European patent which has been withdrawn because the application was not forwarded to the European Patent Office within the prescribed time limit pursuant to Article 77 of the European Patent Convention, the applicant shall pursuant to Article 135(2) file a request for conversion with the Patent and Trademark Office within three months after the date on which the applicant was notified that the application has been deemed to be withdrawn.

(2) If the Patent and Trademark Office receives a request for conversion pursuant to subsection 1, the Office shall transmit the request together with a copy of the application to the patent offices of the countries specified in the request.

95.-(1) If a European patent application is transmitted under Article 135(2) of the European Patent Convention from the

patent office which received the European application to the Patent and Trademark Office, the Office shall without delay notify the applicant about the receipt of the copy of the European application.

(2) The application fee and the translation or, if the European application is drawn up in Danish or English, a copy of the application, as required under section 88(1)(iii) of the Patents Act, shall be received by the Patent and Trademark Office within three months from the date on which the Patent and Trademark Office has sent the notification referred to in subsection 1 to the applicant.

(3) If a converted European patent application under Article 135 of the European Patent Convention has been subject to a novelty search and an examination as to patentability on the basis of documents in English, the claims shall be filed in Danish when the Patent and Trademark Office has concluded that a patent may be granted. The description, including any drawings, photographs and sequence listing, as well as the abstract shall be available either in Danish or in English.

96.-(1) The translation of a European patent into Danish or English pursuant to section 77(1) of the Patents Act shall comprise the title of the invention, the description, including any drawings, photographs and sequence listing, as well as the claims. The claims shall be filed only in a Danish translation.

(2) The text filed pursuant to section 77(1) of the Patents Act shall be

accompanied by a separate notification stating the number of the patent and the name or firm name and postal address of the proprietor of the patent.

(3) If the requirements of subsections 1 and 2 are not complied with, the text shall be deemed not to have been filed.

97.- The translation under sections 83 and 95 of the Patents Act shall be accompanied by a separate notification stating the number of the application and the name or firm name and postal address of the applicant. If that requirement is not complied with, the translation shall be deemed not to have been filed.

98.-(1) The advertisement concerning the receipt of the text under section 77 of the Patents Act shall contain the information referred to in section 96(2), the classes of the patent application or the patent, the title of the invention and information about the date accorded as the date of filing of the application. Moreover, the advertisement shall contain information about the date on which the European Patent Office has published the grant of the patent or the maintenance of the patent in amended form and, if priority is claimed, where the previous application whose priority is claimed was filed and the date of filing and number of that application.

(2) The advertisement concerning a translation under sections 83 and 95 of the Patents Act shall contain the information referred to in section 97 as well as information about the classes of the application, the title of the invention,

the date accorded as the date of filing of the application and, if priority is claimed, where the previous application whose priority is claimed was filed and the date of filing and number of that application.

99.-(1) Correction of the translation under section 86 of the Patents Act shall be effected by the filing of a new copy of the complete translation with a clear indication of the corrections. The corrected translation shall be accompanied by a separate notification stating the number of the patent or the application and the name and address of the proprietor of the patent or the applicant, respectively.

(2) If the requirements of subsection 1 are not complied with, the corrected translation shall be deemed not to have been filed.

(3) The advertisement under section 86(1) of the Patents Act shall contain the information referred to in section 96(2), the classes of the patent application or the patent, the title of the invention and information about the date on which the Patent and Trademark Office has received the corrected translation and the prescribed fee.

(4) The advertisement under section 86(2) of the Patents Act shall contain the information referred to in section 97, the classes of the application, the title of the invention and information about the date on which the Patent and Trademark Office has received the corrected translation.

Part VII

Miscellaneous provisions

Chapter 21

Miscellaneous provisions

Spare parts and accessories for aircraft

100.- Notwithstanding a granted patent, spare parts and accessories for aircraft may be imported into this country and used for the repair of aircraft belonging to another State. That shall apply if the State

- (i) is a party to the Convention on International Civil Aviation of 7 December 1944 and
- (ii) is either a party to the Paris Convention for the Protection of Industrial Property of 20 March 1883 or
- (iii) has a patent legislation which recognises inventions made by nationals of another State which is a party to the first-mentioned Convention and protects such inventions by a legislation which is in principle in conformity with the Paris Convention.

Advertisements

101.- Advertisements shall be made on the website of the Patent and Trademark Office.

Power of attorney

102.- If an applicant, a holder or a party to a case before the Patent and Trademark Office is represented by an agent, a power of attorney shall be filed. The Patent and Trademark Office may grant

exemption from the requirement concerning a power of attorney.

Languages

103.-(1) The Patent and Trademark Office shall examine and process a case in English if the applicant so requests or if the parties to a case before the Patent and Trademark Office so agree. The Patent and Trademark Office may at any time decide that the examination and other processing of a case shall be effected in Danish.

(2) Documents filed with the Patent and Trademark Office shall be drawn up in Danish or English. If the documents are drawn up in any other language, the Patent and Trademark Office may require that a translation be filed. The translation may be required to be certified by a translator or in another specified prescribed manner.

(3) If the examination and other processing of a case pursuant to sections 21 and 53b of the Patents Act result in an invitation from the Patent and Trademark Office to the proprietor of the patent to file an amended text, that text shall be filed in Danish or English before the expiry of a time limit to be prescribed by the Office. Amendments of the text concerning the claims shall be filed in Danish only.

Compulsory licence

104.-(1) In the evaluation of the possibility of obtaining a compulsory licence under section 45(1) of the Patents Act, working within the European Union

or working in a State which has ratified or acceded to the Agreement on the European Economic Area (EEA) or the Agreement on the Establishment of the World Trade Organisation (WTO) shall be equivalent to working in this country.

(2) In the evaluation of the possibility of obtaining a compulsory licence under section 48 of the Patents Act, exploitation within the European Union or exploitation in a State which has ratified or acceded to the Agreement on the European Economic Area (EEA) or the Agreement on the Establishment of the World Trade Organisation (WTO) shall be equivalent to exploitation in this country.

Part VIII

Entry into force, transitional provisions

Chapter 22

Entry into force

105.-(1) This Order shall enter into force on 1 February 2013.

(2) At the same time Order No. 93 of 29 January 2009 on patents and supplementary protection certificates shall be repealed.

Transitional provisions

106.- This Order shall apply to patent applications which are filed with the Patent and Trademark Office on or after the date of its entry into force and to patent applications which at its entry into force

are pending before the Patent and Trademark Office with the following exceptions:

(i) Section 9 shall apply to applications filed after 31 December 1995.

(ii) Section 12(3) of Order No. 1193 of 23 December 1992 shall apply to applications filed before 1 January 1996.

(iii) The provisions of this Order relating to the possibility for the Patent and Trademark Office to examine and process applications on the basis of English-language documents shall only apply to applications filed after 1 May 2008.

(iv) Section 6(3) and section 103(3) shall apply to applications filed on or after 1 January 2009.

The Patent and Trademark Office, 18 January 2013

JESPER KONGSTAD

/ Anne Rejnhold Jørgensen