

The Consolidate Patents Act¹⁾

Publication of the Patents Act, cf. Consolidate Act No. 108 of 24 January 2012 including the amendments which follow from section 29 of Act No. 639 of 12 June 2013 and section 3(ii) to (vi) of Act No. 309 of 28 March 2015.²⁾

The amendments which follow from section 1(i) and (xxxiv) of Act No. 1057 of 23 December 1992 to Amend the Patents Act (Ratification of the Agreement relating to Community Patents, etc.) are not included in this Consolidate Act since the date of entry into force of those amendments shall be fixed by the Minister of Business and Growth, cf. section 2(2) of Act No. 1057 of 23 December 1992.

The amendments which follow from section 5 of Act No. 551 of 2 June 2014 on a Unified Patent Court, etc. are not included in this Consolidate Act since the date of entry into force of those amendments shall be fixed by the Minister of Business and Growth, cf. section 3(1) of Act No. 551 of 2 June 2014.

The amendments which follow from section 3 (i) and (vii) of Act No. 309 of 28 March 2015 to Amend the Trade Marks Act, the Designs Act, the Patents Act and the Utility Models Act (Increased efforts against counterfeiting and piracy by establishing an enforcement

unit, etc.) are not included in this Consolidate Act since the date of entry into force of those amendments shall be fixed by the Minister of Business and Growth, cf. section 5(2) of Act No. 309 of 28 March 2015.

Part 1

General provisions

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

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

- (i) discoveries, scientific theories and mathematical methods,
- (ii) aesthetic creations,

¹⁾ Act No. 1430 of 21 December 2005 contains provisions implementing parts of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (EU Official Journal 2004 No. L 195, p. 15). Act No. 399 of 30 April 2007 contains provisions implementing parts of Directive 2001/82/EC of the European Parliament and of the Council on the Community code relating to veterinary medicinal products (EC Official Journal 2001 No. L 311, p. 1) as amended by Directive 2004/28/EC (EU Official Journal 2004 No. L 136, p.58) and parts of Directive 2001/83/EC of the European Parliament and of the Council on the Community Code relating to medicinal products for human use (EC Official Journal 2001 No. L 311, p. 67) as amended by Directive 2004/27/EC (EU Official Journal 2004 No. L 136, p. 34).

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

(iv) presentations of information.

(3) Methods for the treatment of the human or animal body by surgery or therapy or diagnostic methods practised on the human or animal body shall not be regarded as inventions either. This provision shall not prevent the grant of patents for products, including substances and compositions, for use in any of such methods.

(4) Patents shall not be granted in respect of plant or animal varieties. Patents may, however, be granted for inventions, the subject-matter of which is plants or animals if the technical feasibility of the invention is not confined to a particular plant or animal variety. In this Act a “plant variety” means a plant variety as defined in Article 5 of Council Regulation (EC) No. 2100/94 on Community plant variety rights.

(5) Patents shall not be granted in respect of essentially biological processes for the production of plants or animals. In this Act an “essentially biological process” means a process consisting entirely of natural phenomena such as crossing or selection. Patents may, however, be granted for microbiological processes or other technical processes or products obtained by such processes. In this Act a “microbiological process” means any process involving microbiological material, performed on microbiological material or resulting in microbiological material.

(6) Inventions may be patentable even if they relate to a product consisting of or containing biological material or to a process by means of which biological material is produced, processed or used. Biological material which is isolated from its natural environment or produced by means of a technical process

may be the subject-matter of an invention even if it previously occurred in nature. In this Act “biological material” means any material containing genetic information and capable of reproducing itself or being reproduced in a biological system.

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

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

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

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

(3) Pursuant to subsection 1 patents may *inter alia* not be granted in respect of

(i) processes for cloning human beings,

(ii) processes for modifying the germ line genetic identity of human beings,

(iii) uses of human embryos for industrial or commercial purposes, and

(iv) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial

medical benefit to man or animal, and also animals resulting from such processes.

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

(2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use or in any other way. The contents of patent applications filed in this country before the date of filing of the patent application shall also be regarded as comprised in the state of the art if such applications are made available to the public in accordance with the rules of section 22. The same shall apply to the contents of applications for the registration of utility models filed in this country before the date of filing of the patent application if such applications are made available to the public in accordance with the rules relating to utility models. The requirement in subsection 1 to the effect that the invention shall differ essentially from the state of the art shall, however, not apply in relation to the contents of such applications.

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

(4) The requirement under subsection 1 that inventions be new shall not prevent the grant of patents for known substances or compositions for use in the methods referred to in section 1(3), provided that the use of the substance or composition is not known for any of those methods.

(5) The requirement under subsection 1 that inventions be new shall also not prevent the grant of patents for the substances or compositions referred to in subsection 4 for use in accordance with the methods referred to in section 1(3), provided that the use is a specific use of the substance or composition and that specific use is not known for any of those methods.

(6) Patents may, however, be granted for inventions made available to the public if that occurred within the 6 months preceding the filing of the application, and it was in consequence of

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

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

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

(i) by making, offering, putting on the market or using a product which is the subject-matter of the patent, or by importing or stocking the product for such purposes, or

(ii) by using a process which is the subject-matter of the patent or by offering the process for use in this country, if the person offering the process knows, or it is obvious in the circumstances, that the process may not be used without the consent of the proprietor of the patent, or

(iii) by offering, putting on the market or using a product obtained by a process which is the subject-matter of the patent or by

importing or stocking the product for such purposes.

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

(3) The exclusive right shall not extend to

(i) acts done for non-commercial purposes,

(ii) acts concerning products put on the market in this country or in another country within the European Economic Area (EEA) by the proprietor of the patent or with his consent,

(iii) acts done for experimental purposes relating to the subject-matter of the patented invention,

(iv) acts delimited to the subject-matter of the patented invention which are necessary for obtaining a marketing authorisation for a medicinal product for humans or animals in the EU, in an EU member state or in other countries or

(v) the preparation in a pharmacy of a medicinal product according to a medical

prescription for individual cases or acts concerning the medicinal product so prepared.

3a.-(1) The protection conferred by a patent for a biological material possessing specific characteristics as a result of the invention shall extend to any biological material derived from that biological material through multiplication or propagation in an identical or divergent form and possessing the same characteristics.

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

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

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

3b.-(1) Notwithstanding the provisions of section 3a(1) to (3), the sale or any other form

of commercialisation of plant propagating material by the proprietor of the patent or with his consent to a farmer for agricultural use shall imply an authorisation for the farmer to use the product of his harvest for multiplication or propagation by him on his own farm, the extent and conditions thereof being laid down in Article 14 of Council Regulation (EC) No. 2100/94 on Community plant variety rights.

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

4.-(1) Any person who, at the time when the patent application was filed, was exploiting the invention commercially in this country may, notwithstanding the grant of a patent, continue such exploitation retaining its general character, provided that the exploitation did not constitute an evident abuse in relation to the applicant or his legal predecessor. Such a right of exploitation shall also, under similar conditions, be enjoyed by any person who had made substantial preparations for commercial exploitation of the invention in this country.

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

5.-(1) Notwithstanding a patent having been granted for an invention, persons other than the proprietor of the patent may exploit the invention by the use of a foreign vehicle, vessel or aircraft during its temporary or accidental presence in this country.

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

6.-(1) On request an application for a patent for an invention which not earlier than 12 months prior to the date of filing has been disclosed in an application for a patent or a utility model registration in this country or a patent, an inventor's certificate or a utility model protection in another country party to the Paris Convention for the Protection of Industrial Property of 20 March 1883 shall for the purposes of section 2(1), (2), (4) and (5) and section 4 be regarded as filed at the same time as the previous application. The same right of priority shall be enjoyed even if the application for protection does not originate from a country party to the Convention when pursuant to a bilateral or multilateral agreement an equivalent priority from a Danish patent application or utility model application is granted in the country in which the previous application was filed on conditions and with effects which are essentially in conformity with the Convention.

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

Part 2

Patent applications and the examination and other processing thereof, etc.

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

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

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

(4) The Minister of Business and Growth shall lay down further rules for the activities of the Board of Appeal, including rules relating to procedures and rules to the effect

that the appellant shall pay a fee for the examination of an appeal.

8.-(1) An application for a patent shall be filed with the Patent Authority or, in the cases referred to in Part 3, with the patent authority of a foreign state or with an international organisation.

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

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

(4) The name of the inventor shall be stated in the application. If someone other than the inventor applies for a patent, it shall appear from the application that the applicant is entitled to the invention and that the inventor has been informed of the filing of an application for a patent for the invention. The Patent Authority may, however, require further documentation of the applicant's right to the invention.

(5) The applicant shall pay the prescribed application fee. For the patent application the prescribed renewal fee in respect of each fee year beginning before the application is finally decided upon shall also be paid. The

fee year shall comprise 1 year and shall the first time be calculated from the date of filing of the application and thereafter from the corresponding day of the calendar year.

8a.-(1) If carrying out the invention involves the use of biological material which is not available to the public or which cannot be described in the documents of the application in such a manner as to enable a person skilled in the art to carry out the invention, a sample of the biological material shall be deposited not later than on the date of filing of the application. The sample shall thereafter always be deposited in such a manner that any person entitled to the furnishing of a sample may have the sample furnished in Denmark. The Minister of Business and Growth shall lay down rules as to where deposits may be made.

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

8b.-(1) The Patent and Trademark Office shall accord a date of filing to the application if

(i) it contains an indication that the material filed is intended as an application,

(ii) the material filed makes it possible to determine the applicant's identity or to contact the applicant, and

(iii) the material filed includes a description.

(2) The Minister of Business and Growth shall lay down specific rules governing the

applicant's opportunity to have a date of filing accorded subsequently where the requirements of subsection 1 are not complied with.

(3) If the requirements of subsection 1 are not complied with, the Patent and Trademark Office shall grant the applicant a period of 2 months to comply with them.

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

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

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

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

13.- An application for a patent may not be amended in such a way that the patent is applied for in respect of subject-matter which was not disclosed in the application as filed.

14.- (Repealed)

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

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

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

(4) If any renewal fee is not paid pursuant to sections 8, 41 and 42, the application shall be shelved without previous notification. The examination and other processing of an application shelved for that reason may not be resumed.

16.- If, after having received the applicant's reply, the Patent Authority still has objections to the acceptance of the application, and if the applicant has had an opportunity to file his observations on the objections, the application

shall be refused, unless the Patent Authority feels called upon once more to invite the applicant under section 15(1).

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

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

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

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

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

(2) After the Patent Authority has sent the notification referred to in subsection 1, the claims may not be amended in such a way as to extend the scope of the protection conferred by the patent.

(3) The patent specification may at the request of the applicant to that effect be published in Danish or in English with claims in Danish.

(4) The fee for publication of the patent specification shall be paid within 2 months after the Patent Authority has sent the notification under subsection 1. Failure to pay shall cause the application to be shelved. The proceedings for grant shall, however, be resumed if the applicant pays the fee for publication of the patent specification and the prescribed resumption fee within 4 months after the expiry of the time limit.

20.-(1) When the requirements of section 19 have been complied with, the Patent Authority shall grant the patent and issue a patent certificate. At the same time the grant of the patent shall be advertised.

(2) A patent specification including the description, claims and abstract shall be obtainable from the Patent Authority at the same time as the grant of the patent is advertised. The patent specification shall mention the proprietor of the patent and the inventor.

21.-(1) Any person shall be entitled to file an opposition with the Patent Authority against a granted patent. The opposition shall state the grounds on which it is based and shall be received by the Patent Authority within 9 months from the advertisement of the grant of the patent. The opposition shall be accompanied by the prescribed fee.

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

(i) the requirements of sections 1 and 2 are not complied with,

(ii) it relates to an invention which is not disclosed in a manner sufficiently clear to enable a person skilled in the art to carry out the invention on the basis of the description, or

(iii) its subject-matter extends beyond the contents of the application as filed.

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

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

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

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

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

(5) If a document contains business secrets which do not relate to an invention for which a patent is applied for or has been granted, the Patent Authority may, on request, when

circumstances make it desirable, decide that the document shall not be available or only available in part. If such a request has been filed, the document shall not be made available until a decision has been made or during the period within which the decision may be appealed against. An appeal shall have suspensive effect.

(6) If a sample of biological material has been deposited under section 8a, any person shall have the right to obtain a sample of the material when the files are made available under subsection 1, 2 or 3. After the patent has been granted, and irrespective of the patent having ceased to have effect or been revoked, the furnishing of a sample may be made to any person requesting it. That shall, however, not imply that a sample shall be furnished to any person who, under provisions laid down in or pursuant to law, is not allowed to handle the deposited material. Nor shall a sample be furnished to any person if, due to the dangerous properties of the material, his handling of the sample is supposed to involve obvious danger.

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

(8) The request for the furnishing of the sample shall be submitted to the Patent Authority and shall contain a declaration to observe the restrictions on the use of the sample which appear from rules laid down by

the Minister of Business and Growth. If the sample is to be furnished to an expert in the art, the declaration shall instead be given by the latter.

23.-(1) If an opposition has been filed, the proprietor of the patent shall be notified of the opposition and be given an opportunity to file his observations thereon.

(2) The Patent Authority may examine an opposition even if the patent has ceased or will cease to have effect under section 51, 54 or 96, even if the opposition is withdrawn or even if the opponent dies or loses his capacity to enter into legal transactions.

(3) The Patent Authority may revoke a patent or maintain it unamended or in amended form. If the Patent Authority finds that the patent may be maintained in amended form and the approval thereof by the proprietor of the patent has been established, the patent specification shall be amended accordingly after the proprietor of the patent has paid the prescribed fee for publication thereof. Copies of the amended patent specification shall be obtainable from the Patent Authority.

(4) If the proprietor of the patent disapproves of the maintenance of the patent in the amended form or does not pay the fee for publication of a new patent specification in due time, the patent shall be revoked.

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

24.-(1) An appeal from the final decision of the Patent and Trademark Office concerning a patent application may be filed with the Board of Appeal for Patents and Trademarks by the applicant. The proprietor of the patent may file an appeal with the Board of Appeal for Patents and Trademarks when a patent has been revoked, or if the Patent and Trademark

Office finds that the patent may be maintained in amended form following an opposition. The opponent may file an appeal with the Board of Appeal for Patents and Trademarks when a patent is maintained in unamended form or if the Patent and Trademark Office finds that the patent may be maintained in amended form despite a duly filed opposition. If the opponent withdraws his appeal, the appeal may nevertheless be examined when circumstances make it desirable.

(2) Decisions by which a request for resumption under section 15(3) or section 19(4) has been refused or by which a request for transfer under section 18 has been complied with may be appealed against by the applicant. Decisions by which a request for the transfer of the application has been refused may be appealed against by the person having made the request.

(3) Decisions by which a request under section 22(5) has been refused may be appealed against by the person having made the request.

25.-(1) Appeals under section 24 shall be filed with the Board of Appeal for Patents and Trademarks not later than 2 months after the date on which the Patent and Trademark Office has notified the party concerned of the decision. The fee prescribed therefor shall be paid within the same time limit. Failure to do so shall cause the appeal to be rejected.

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

(3) Proceedings for the trial of decisions made by the Patent and Trademark Office which may be appealed against to the Board of Appeal for Patents and Trademarks may not be brought before the courts until the decision of the Board of Appeal has been given, cf., however, sections 52 and 53. Proceedings for

the trial of decisions by which the Board of Appeal for Patents and Trademarks refuses an application for a patent or revokes a patent shall be brought within 2 months after the date on which the party concerned was notified of the decision.

(4) The provision in section 22(5) shall apply *mutatis mutandis* with respect to documents received by the Board of Appeal for Patents and Trademarks.

26.- If an application which is available to the public is finally refused or shelved, an advertisement shall be made to that effect.

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

Part 3

International patent applications

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

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

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

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

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

31.-(1) If the applicant wishes to proceed with an international application designating Denmark, he shall within 31 months from the international filing date or, if priority is claimed, from the priority date pay the prescribed fee to the Patent Authority and file a translation into Danish or English of the international application to the extent prescribed by the Minister of Business and Growth or, if the application is written in Danish or English, a copy of the application.

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

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

32.- (Repealed)

33.-(1) When an international patent application has been proceeded with under section 31, the provisions of Part 2 shall apply

to the application and the examination and other processing thereof with the deviations provided for in the present section and in sections 34 to 37. The examination and other processing of the application shall only be commenced prior to the expiry of the time limit applicable under section 31(1) if the applicant so requests.

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

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

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

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

34.- In the case of an international patent application a patent shall only be granted or the application refused after the expiry of the time limit prescribed by the Minister of Business and Growth, unless the applicant has consented to the application being decided upon before.

35.- In the case of an international patent application the Patent Authority may not without the consent of the applicant grant a patent or publish the application prior to its

publication by the International Bureau of the World Intellectual Property Organization (WIPO) or prior to the expiry of 20 months from the international filing date or, if priority is claimed, from the priority date.

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

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

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

37.- If any part of an international patent application has not been the subject of an international preliminary examination because the applicant has restricted the claims at the invitation of the International Preliminary Examining Authority, the said part of the application shall be considered withdrawn

before the Patent Authority, unless the applicant pays the prescribed fee within 2 months after the date on which the Patent Authority has invited him to pay with reference to the restriction of the examination carried out.

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

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

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

(4) The provision of section 2(2), 2nd sentence, shall apply to applications taken up

for examination and other processing pursuant to subsection 3, provided that the application is made available to the public under section 22.

Part 4

Extent of the protection and term of the patent

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

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

Part 5

Payment of renewal fees

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

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

within 2 months after that date shall in no case fall due until 2 months have elapsed after the date on which the application was proceeded with or taken up for examination and other processing.

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

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

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

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

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

Part 6

Licensing, transfer, etc.

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

44.-(1) The transfer of a patent, the grant of a licence, the pledging of a patent, the levying of execution on the patent or the commencement of insolvency proceedings against the proprietor of the patent shall on request be entered in the Register of Patents.

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

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

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

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

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

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

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

46a.-(1) A breeder who cannot acquire or exploit a plant variety right without infringing a prior patent may apply for a compulsory licence for the exploitation of the invention, provided that the compulsory licence is necessary for the exploitation of the plant variety to be protected, subject to the payment of an appropriate royalty. The compulsory licence shall only be granted if the breeder demonstrates that the variety constitutes significant technical progress of considerable economic importance compared with the invention.

(2) If under the Plant Variety Protection Act a proprietor of a patent has obtained a compulsory licence to exploit a protected plant variety, the breeder shall be entitled on reasonable terms to obtain a cross-licence for the exploitation of the invention.

47.- When required by important public interests, any person who wishes to exploit an invention commercially for which another

person holds a patent may obtain a compulsory licence to do so.

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

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

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

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

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

(3) A compulsory licence may only be transferred to others together with the business in which it is exploited or in which the exploitation was intended. With respect to

compulsory licences granted pursuant to section 46(1) it shall moreover apply that any transfer of the compulsory licence shall be effected together with the patent the exploitation of which is dependent on a patent or a registered utility model which belongs to another person.

(4) Compulsory licences concerning semiconductor technology may only be granted for public non-commercial exploitation or for terminating an anti-competitive practice which has been established by a court decision or an administrative decision.

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

Part 7

Termination of the patent, administrative re-examination, etc.

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

52.-(1) A patent may be revoked by a court decision if

(i) it has been granted notwithstanding that the requirements in sections 1 and 2 are not complied with,

(ii) it relates to an invention which is not disclosed in a manner sufficiently clear to enable a person skilled in the art to carry out the invention on the basis of the description,

(iii) its subject-matter extends beyond the contents of the application as filed, or

(iv) the scope of the protection conferred by the patent has been extended after the Patent Authority has notified the applicant under section 19(1) that a patent may be granted.

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

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

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

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

(2) The person who is deprived of the patent shall, if he in good faith has exploited the

invention commercially in this country or has made substantial preparations for such exploitation, be entitled, for a reasonable compensation and on reasonable terms in other respects, to continue the exploitation already commenced or to implement the planned exploitation retaining its general character. Such a right shall also, under the same conditions, be enjoyed by holders of registered licences.

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

53a.- Proceedings for revocation instituted while the examination of an opposition pursuant to section 21 is not finished by the Patent Authority may be suspended by the court until a final decision has been made by the Patent Authority.

53b.-(1) Any person may file a request with the Patent Authority to the effect that a patent granted by the Patent Authority or granted with effect for Denmark pursuant to section 75 be re-examined.

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

(3) If proceedings concerning a patent are instituted before the courts prior to a final decision having been given with respect to a request pursuant to subsection 1 relating to the same patent, the Patent Authority shall suspend the examination of the request until the case before the courts has been finally

decided upon, unless the request has been filed by the proprietor of the patent.

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

(5) The Patent Authority may examine a request for re-examination even if the patent has ceased or will cease to have effect pursuant to section 51, 54 or 96. The Patent Authority may also examine the request even if the request is withdrawn or even if the person having requested the re-examination dies or loses his capacity to enter into legal transactions.

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

53c.-(1) A request for re-examination by persons other than the proprietor of the patent may only be based on the grounds for revocation referred to in section 52(1).

(2) The Patent Authority may revoke the patent or maintain it in amended or unamended form. The Patent Authority shall examine whether the request may be complied with, and, if so, whether the grounds referred to in section 52(1) will prevent the patent from being maintained in amended form.

53d.-(1) If a request from persons other than the proprietor of the patent cannot be complied with, the request shall be refused, and the patent shall be maintained unamended.

(2) If the request may be complied with, but the patent cannot be maintained in amended form, the Patent Authority shall revoke the

patent. If the patent may be maintained in amended form, the patent shall be amended accordingly if the proprietor of the patent approves the amended text in which the Patent Authority intends to maintain the patent. If the proprietor of the patent disapproves of the amended text, the patent shall be revoked.

(3) When a decision has been made to maintain the patent in amended form, the proprietor of the patent shall pay the fee prescribed for publication of a new patent specification within the prescribed time limit. If the fee is not paid in due time, the patent shall be revoked.

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

53e.-(1) The proprietor of the patent himself may on the conditions referred to in section 53b(2) and (6) request that his patent be limited by amendment of the description, claims or drawings. If the proprietor of the patent requests or has requested a limitation or revocation of the patent at the European Patent Office pursuant to Articles 105a to 105c of the European Patent Convention, the Patent Authority of this country shall suspend the examination of a request under the 1st sentence until the European Patent Office has decided on the matter. The Patent Authority of this country shall at the request of the proprietor of the patent resume the examination of the request under the 1st sentence if there was not full identity between that request and the request for a central limitation which the proprietor of the patent filed with the European Patent Office.

(2) The Patent Authority shall then examine whether the grounds referred to in section 52(1) will prevent the patent from being maintained in the amended form desired by the proprietor of the patent. If the requested limitation may then be approved, the patent

shall be amended accordingly, and section 53d(3) and (4) shall apply *mutatis mutandis*. However, the patent shall be declared to have ceased to have effect if the fee for publication of a new patent specification is not paid in due time.

(3) If, on the other hand, the patent cannot be maintained in the requested limited form, the request for limitation shall be rejected.

53f.- If a patent has been amended under section 53d or 53e, copies of the new patent specification including the description, drawings and claims in the amended form shall be obtainable from the Patent Authority as from the date of the advertisement pursuant to section 53d(4).

54.-(1) If the proprietor of a patent surrenders the patent to the Patent Authority, the Patent Authority shall declare the patent to have ceased to have effect in its entirety.

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

55.- When a patent has lapsed or been declared to have ceased to have effect or has been revoked or transferred to another person by a final court decision, the Patent Authority shall make an advertisement to that effect.

55a.- If a patent is revoked entirely or partially, the patent shall, to the extent that it has been revoked, be considered not to have had the effects referred to in section 3 already from the date of filing of the patent application.

Part 8

Obligation to give information about patents

56.-(1) An applicant for a patent who invokes his patent application against another person before the files of the application have been made available to the public shall be under an obligation on request to consent to letting the said person obtain inspection of the files of the application. If the application comprises a deposited sample of biological material as referred to in section 8a, the said person shall also have a right to obtain a sample. The provisions of section 22(6), 2nd and 3rd sentences, (7) and (8) shall apply in those cases.

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

Part 9

Liability to punishment, liability for damages, etc.

57.-(1) Any person who intentionally or grossly negligently infringes the exclusive right conferred by a patent (patent infringement) shall be punished with a fine.

(2) If the infringement has been committed intentionally and under aggravating circumstances, the penalty may increase to imprisonment of up to 1 year and 6 months, unless a heavier penalty is provided for by section 299b of the Penal Code. Aggravating circumstances shall in particular be considered to exist if a significant and obviously unlawful profit is intended by the infringement.

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

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

58.-(1) Any person who intentionally or negligently commits patent infringement shall pay

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

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

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

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

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

(i) withdrawn from the market,

(ii) removed definitively from the market,

(iii) destroyed,

(iv) surrendered to the injured party or

(v) altered in a specified manner.

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

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

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

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

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

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

(iii) a reasonable compensation is sufficient.

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

(2) If the files of the application are written in English, subsection 1 shall only apply as from the date when the applicant has filed a translation of the claims into Danish.

(3) The person concerned shall only pay damages under section 58 for injury caused by infringements committed prior to the advertisement of the grant of the patent under section 20 to the extent found reasonable.

(4) Claims for damages under subsection 1 shall not be statute-barred earlier than 1 year after the time limit for the filing of oppositions against the patent has expired or after the Patent Authority has decided to maintain the patent.

60a.-(1) In a court decision by which a person is held liable under sections 58 to 60 the court may, if so requested, decide that the court decision in full or extracts thereof shall be published.

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

61.- In proceedings for patent infringement the invalidity of the patent may only be put in issue if a claim for revocation is set up against the proprietor of the patent, possibly after the latter has been summoned under the rules laid down in section 63(4). If the patent is revoked, the provisions of sections 57 to 60 shall not apply.

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

(2) The provisions of section 57(3) and (4) shall apply *mutatis mutandis*.

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

(2) If the plaintiff or the person who has requested an administrative re-examination does not, on the day on which the case comes up for trial or in the case of a request for re-examination at its filing, prove that a notification under subsection 1 has been given, the court or, in the case of a request for re-examination, the Patent Authority may fix

a time limit for compliance with the requirements of subsection 1. If the said time limit is not observed, the case shall be dismissed.

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

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

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

64a.-(1) If the subject-matter of a patent is a process for the manufacture of a new product, the same product shall, when manufactured by another person than the proprietor of the patent, be deemed to have been manufactured by the patented process, unless evidence to the contrary is submitted.

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

65.- Office copies of court decisions in proceedings instituted under this Act shall be

sent to the Patent Authority on the initiative of the court.

65a.- If the customs and taxation authorities become suspicious of infringements comprised by section 57, information to that effect may be passed on to the proprietor of the right.

Part 10

Miscellaneous provisions

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

67.-(1) Appeals from the decisions of the Patent and Trademark Office pursuant to sections 44, 53d, 53e, 72(1) and (2), 73 and 96 may be filed with the Board of Appeal for Patents and Trademarks by the applicant, the proprietor of the patent or the person who has requested administrative re-examination or termination of the patent not later than 2 months after the date on which the party in question was notified of the decision. Other parties having an interest in the said decision may file a similar appeal not later than 2 months after the advertisement of the decision.

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

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

68.- The Minister of Business and Growth may lay down rules concerning payment for special transactions, publications, transcripts, courses, etc.

69.-(1) The Minister of Business and Growth shall lay down specific rules concerning patent applications and their examination and other processing, concerning the examination of oppositions, concerning administrative re-examination, concerning re-establishment of rights, concerning the surrender of patents, concerning the arrangement and keeping of the Register of Patents, concerning the publication and contents of the Patent Gazette, concerning the exchange of electronic data with the Patent Authority and concerning the procedures of the Patent and Trademark Office. It may thus be prescribed that the records of the Patent Authority relating to applications filed shall be available to the public. The Minister of Business and Growth may lay down specific rules concerning the days on which the Patent Authority shall be closed.

(2) The Minister of Business and Growth may direct that the Patent Authority at the request of the authority of another country may give information to that authority about the examination and other processing of patent applications filed in this country and that the Patent Authority, in deciding whether the criteria for patentability have been met, may accept novelty searches which have been carried out for that purpose by a corresponding authority in another country or by an international institution.

(3) The Minister of Business and Growth may furthermore direct that, at the request of the Patent Authority and within a time limit fixed by that Authority, any applicant who in any country has filed a corresponding application for a patent shall furnish information about the result of the examination as to the

patentability of the invention which has been communicated to him by the patent authority of that country and transmit a copy of the correspondence with the said authority. However, no obligation to furnish information may be prescribed in respect of any application referred to in Part 3 which has been the subject of an international preliminary examination on which a report has been filed with the Patent Authority.

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

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

(2) The Minister of Business and Growth shall lay down rules governing that service, the payment therefor and the payment of fees for reminders in the case of late payment.

(3)³⁾ The Access to Public Administration Files Act shall, except for section 8, not apply to the tasks referred to in subsection 1.

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

(2) The provisions of subsection 1 shall apply to the time limit referred to in section 6(1) if an applicant in a subsequent application requests re-establishment of his priority within 2 months from the expiry of the time limit referred to in section 6(1).

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

(i) within the 10 days preceding the expiry of the time limit the postal service was interrupted on account of war, revolution, civil disorder, strike, natural calamity or other like reason in the locality where the sender has his place of business or is staying, and the mailing to the Patent Authority is effected within 5 days after the resumption of the postal service, or

(ii) the mailing was effected by registered letter to the Patent Authority not later than 5 days prior to the expiry of the time limit though only if the mailing was effected by airmail, where possible, or if the sender had every reason to believe that surface mail would not arrive later than 2 days after the date of mailing.

(2) If the applicant wishes to have his rights re-established under subsection 1, he shall file a request to that effect with the Patent Authority before the expiry of the time limit referred to.

74.-(1) When a request under section 72 or 73 of this Act has been complied with and, in consequence, a patent application which has

been shelved or refused after having been made available to the public shall be taken up for further processing, or a lapsed patent shall be regarded as maintained, an advertisement shall be made to that effect.

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

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

74a.- If the Minister of Business and Growth refers his or hers rights under this Act to the Patent and Trademark Office, the Minister may lay down rules concerning the right of appeal, including rules to the effect that appeals may not be brought before any higher administrative authority.

Part 10 A

European patents

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

(2) European patents may be granted for Denmark.

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

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

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

77.⁴⁾(1) A European patent shall only have effect in this country provided that the proprietor of the patent within 3 months from the date on which the European Patent Office has published the grant of the patent or a decision to maintain the patent in amended form files with the Patent Authority of this country

- (i) the claims translated into Danish if the patent has been granted in English, or
- (ii) the claims translated into Danish and a translation of the remaining contents of the granted or amended patent into Danish or English if the patent has been granted in German or French.

(2) Within the time limit referred to in subsection 1 the proprietor of the patent shall pay the prescribed fee for the publication.

(3) The text referred to in subsection 1 shall be available to the public. If the European patent application has not yet been published by the European Patent Office, the text shall, however, not be available to the public until such publication has been effected.

(4) When the text referred to in subsection 1 has been filed, the fee referred to in subsection 2 has been paid, and the European Patent Office has published the grant of the patent or its decision to maintain the European patent in amended form, the Patent Authority of this country shall make an advertisement to that effect. Copies of the text shall be obtainable from the Patent Authority without delay.

78.-(1) The provisions of section 72(1) shall also apply to the filing of the translation and payment of the fee pursuant to section 77(1) and (2).

(2) If it is decided pursuant to section 72 that the filing of the translation and payment of the fee referred to in section 77(1) and (2) are to be considered duly made, the Patent Authority of this country shall make an advertisement to that effect.

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

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

80.- If the European Patent Office revokes a European patent in its entirety or in part, it shall have the effect as had the patent been revoked to a corresponding extent in this country. The Patent Authority of this country shall advertise the revocation.

80a.-(1) If the European Patent Office limits or revokes a European patent pursuant to the rules in that respect in Articles 105a to 105c of the European Patent Convention, it shall have the effect as had the patent been limited pursuant to section 53e or had ceased to have effect in this country pursuant to section 54 when the decision is published by the European Patent Office.

(2) The decision to limit or revoke a patent under subsection 1 shall have effect already from the date on which the patent application was filed, and consequently the limited or revoked patent shall not have had the effects referred to in section 3, cf. Article 68 of the European Patent Convention.

(3) The provisions of section 77 shall apply *mutatis mutandis* to decisions made under subsection 1.

(4) The Patent Authority of this country shall publish the decision of the European Patent Office to revoke a European Patent if the revoked patent has been published previously pursuant to section 77.

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

(2) If any renewal fee for the European patent is not paid pursuant to subsection 1, cf. section 41, section 51 shall apply *mutatis mutandis*. As regards the first renewal fee, it

shall, however, not fall due until 3 months after the date on which the patent was granted.

82.-(1) A European patent application to which the European Patent Office has accorded a date of filing shall from that date have the same effect in this country as an application filed in this country. If the application pursuant to the European Patent Convention has priority from an earlier date than the date of filing, such priority shall also apply in this country.

(2) For the purposes of section 2(2), 2nd sentence, the publication of a European patent application under Article 93 of the European Patent Convention shall be considered equivalent to the application having been made available to the public under section 22. The same shall apply to publication under Article 153(3) of the Convention, provided that the European Patent Office considers such publication equivalent to publication under Article 93.

83.-(1) When a European patent application has been published pursuant to the European Patent Convention, and the applicant has filed a translation into Danish of the claims of the published application with the Patent Authority of this country, the Patent Authority of this country shall make the translation available to the public and make an advertisement to that effect.

(2) If any person without permission commercially exploits an invention which is the subject-matter of a European patent application after the advertisement pursuant to subsection 1 has been made, and the application results in a patent for Denmark, the provisions concerning patent infringement shall apply. In such cases the protection conferred by the patent shall, however, only extend to subject-matter disclosed both in the

published claims and in the claims of the patent. In the event that the patent has been limited or revoked by the European Patent Office, cf. Articles 105a to 105c of the European Patent Convention, the protection conferred by the patent shall only extend to the subject-matter disclosed in the published amended claims. Section 57 shall not apply, and the person concerned shall only pay damages under section 58 to the extent found reasonable.

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

84.-(1) If a European patent application or the designation of Denmark is withdrawn or the application or designation is deemed to be withdrawn pursuant to the European Patent Convention, and the processing of the application is not resumed pursuant to Article 121 of the Convention, it shall have the same effect as the withdrawal of an application before the Patent Authority of this country.

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

85.-(1) If the translations referred to in section 77 or 83 do not correspond with the text in the language of the proceedings before the European Patent Office, the protection conferred by the patent shall only extend to subject-matter disclosed in both texts.

(2) Subsection 1 shall apply *mutatis mutandis* with respect to the translation of decisions made pursuant to section 80a(1).

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

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

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

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

87.-(1) If the European Patent Office re-establishes the rights for an applicant for or a proprietor of a patent who has failed to observe a time limit, that decision shall also apply in this country.

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

87a.- Any person who in good faith has commenced commercial exploitation or has made substantial preparations for the exploitation of an invention which is disclosed in a published European patent application or in a published European patent in the period calculated from the date of the decision which is subject to an appeal under Article 112a of the European Patent Convention till the date of publication of the decision thereon shall have the rights provided for in section 74(2) and (3).

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

(i) the request is filed with the national authority which received the application within 3 months after the applicant has been notified that the application is deemed to be withdrawn,

(ii) the request is filed with the Patent Authority of this country within 20 months from the date of filing of the application or, if priority has been claimed, from the date of priority, and

(iii) the applicant within a time limit to be fixed by the Minister of Business and Growth pays the prescribed application fee and files a translation of the application into Danish or English.

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

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

89a.- The provisions of this Act concerning the deposit of biological material shall not apply to European patents.

90.- The Minister of Business and Growth shall lay down specific rules for the implementation of the European Patent Convention and the implementation of the provisions of this Part of the Act.

Part 10 B

Supplementary Protection Certificates

91.-(1) The Minister of Business and Growth may lay down rules necessary for the application in this country of the European Community Regulations concerning the creation of supplementary protection certificates.

(2) A fee shall be paid for the examination and other processing of cases concerning supplementary protection certificates.

(3) Section 57 concerning liability to punishment in the case of patent infringement shall apply *mutatis mutandis* to infringement of the exclusive right conferred by the supplementary protection certificates referred to in subsection 1.

(4) The Minister of Business and Growth may after negotiations with the Faeroe Islands and Greenland Home Rules lay down provisions to the effect that the regulations referred to in subsection 1 concerning supplementary protection certificates shall apply to the Faeroe Islands and Greenland.

Part 10 C

Community patents, etc.⁵⁾

Part 10 D

Fees

98.-(1) For an application for a Danish patent a fee of 3,000 DKK shall be paid, cf. section 8(5). Furthermore, an additional fee of 300 DKK shall be paid for each claim in excess of ten.

(2) For the conversion of a European patent application into a Danish patent application a fee of 3,000 DKK shall be paid, cf. section 88(1)(iii). Furthermore, an additional fee of 300 DKK shall be paid for each claim in excess of ten.

(3) For an application for the proceeding with an international patent application designating Denmark a fee of 3,000 DKK shall be paid, cf. section 31(1) and section 38(2). Furthermore, an additional fee of 300 DKK shall be paid for each claim in excess of ten. For a subsequent filing of a translation of or a copy of the international patent application an additional fee of 1,100 DKK shall be paid, cf. section 31(2).

(4) For the examination and other processing by the Patent and Trademark Office pursuant to sections 36 and 37 concerning international patent applications a fee of 3,800 DKK shall be paid.

(5) For the handling by the Patent and Trademark Office in connection with searches carried out by an International Searching Authority a fee of 500 DKK shall be paid, cf. section 9.

(6)⁶⁾ For the publication of a patent specification a fee of 2,000 DKK shall be paid, cf. section 19(1).

(7)⁷⁾ For the publication of a European patent specification pursuant to section 77(2) a fee of 2,000 DKK shall be paid.

99.-(1) For a patent application, a patent and a European patent a renewal fee shall be paid, cf. section 8(5), section 40 and section 81(1), in the following amounts per year:

- (i) 1st fee year: 500 DKK
- (ii) 2nd fee year: 500 DKK
- (iii) 3rd fee year: 500 DKK
- (iv) 4th fee year: 1,100 DKK
- (v) 5th fee year: 1,250 DKK
- (vi) 6th fee year: 1,400 DKK
- (vii) 7th fee year: 1,600 DKK
- (viii) 8th fee year: 1,800 DKK
- (ix) 9th fee year: 2,050 DKK
- (x) 10th fee year: 2,300 DKK
- (xi) 11th fee year: 2,550 DKK
- (xii) 12th fee year: 2,800 DKK
- (xiii) 13th fee year: 3,050 DKK
- (xiv) 14th fee year: 3,300 DKK
- (xv) 15th fee year: 3,600 DKK
- (xvi) 16th fee year: 3,900 DKK
- (xvii) 17th fee year: 4,200 DKK
- (xviii) 18th fee year: 4,500 DKK
- (xix) 19th fee year: 4,800 DKK
- (xx) 20th fee year: 5,100 DKK.

(2) Renewal fees paid after the due date for payment and up to six months after the due date shall be increased by 20 per cent.

100.-(1) For the filing of an opposition against a granted patent a fee of 2,500 DKK shall be paid, cf. section 21(1).

(2) For a request for administrative re-examination a fee of 7,000 DKK shall be paid, cf. section 53b(6).

(3)⁸⁾ For the publication of an amended patent specification under section 23(3), section 53d(3) or section 53e(2) a fee of 2,000 DKK shall be paid.

(4)⁹⁾ For the publication of an amended patent specification under section 86(1) a fee of 2,000 DKK shall be paid.

101.-(1) For a request for resumption of a patent application a fee of 700 DKK shall be paid, cf. section 15(3) and section 19(4).

(2) For a request for re-establishment of a patent application or a granted patent a fee of 3,000 DKK shall be paid, cf. section 72.

102.- For the handling by the Patent and Trademark Office in cases concerning the filing of an international patent application a fee of 1,500 DKK shall be paid, cf. section 28.

103.-(1) For an application for a supplementary protection certificate a fee of 3,000 DKK shall be paid, cf. section 91(2). For an application for the extension of the duration of a supplementary protection certificate a fee of 2,500 DKK shall be paid.

(2) For a supplementary protection certificate a renewal fee of 5,100 DKK shall be paid per fee year or part thereof, cf. section 91(2). Renewal fees paid after the due date for payment and up to six months after the due date shall be increased by 20 per cent.

(3) For a request for resumption of an application for a supplementary protection certificate a fee of 600 DKK shall be paid, cf. section 91(2).

(4) For a request for re-establishment of an application for a supplementary protection certificate or granted rights a fee of 3,000 DKK shall be paid, cf. section 91(2).

(5) For a request for administrative re-examination a fee of 1,500 DKK shall be paid, cf. section 91(2).

104.-(1) Fees paid pursuant to sections 98 to 103 shall not be refunded when the payment has been effected in due time.

(2) Fees not paid in due time or paid in insufficient amounts at the expiry of the time limit resulting in non-acceptance of the payment shall be refunded.

(3) If the Patent and Trademark Office rejects the examination and other processing paid for, fees paid in connection with the examination and other processing shall be refunded.

105.- The fees referred to in sections 98 to 103 are stated at the 2011-level.

(2) The Patent and Trademark Office may adjust the amounts stated in sections 98 to 103 in accordance with the general price and wage development used for the purposes of the Government Budget. The Patent and Trademark Office shall publish the current fees in a price list.

Part 11

Provisions as to entry into force and transitional provisions

1.-(1) This Act shall enter into force on 1 January 1968. At the same time, the Patents

Act, cf. Consolidate Act No. 361 of 19 December 1958, shall be repealed. Furthermore, section 4 of the Employees' Inventions Act No. 142 of 29 April 1955 shall be repealed.

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

2.- Patents which have been granted or will be granted under the previous legislation may only be revoked in accordance with the provisions of section 24 of the previous Patents Act.

Act No. 639 of 12 June 2013 (Consequential amendments in view of the Access to Public Administration Files Act and of amendments of the Public Administration Act and the Administration of Justice Act) contains the following provision as to entry into force:

Section 31

This Act shall enter into force on 1 January 2014.

Act No. 309 of 28 March 2015 (Increased efforts against counterfeiting and piracy by establishing an enforcement unit, etc.) contains the following provision as to entry into force and transitional provision:

Section 5

- (1) This Act shall enter into force on 1 April 2015, cf., however, subsection 2.
- (2) The Minister of Business and Growth shall fix the date of entry into force of sections 1 and 2, section 3(i) and (vii) and section 4.
- (3) Section 3 (ii), (iv) and (vi) shall not apply to documents which are filed before the entry into force of this Act. With respect to such documents the previous rules shall apply.

The Ministry of Business and Growth, 1 March 2016

TROELS LUND POULSEN

/Jesper Kongstad

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- 2) This Consolidate Act contains information about provisions as to entry into force and transitional provisions adopted during the sessional years 2012/2013 to 2014/2015 of the Danish Parliament (the Folketing). Provisions as to entry into force and transitional provisions for previously adopted amendments of the Patents Act are laid down in Consolidate Act No. 108 of 24 January 2012. The amendments indicated below in consequence of Act No. 639 of 12 June 2013 to Amend various Provisions on Access to Files, etc. and Act No. 309 of 28 March 2015 to Amend the Trade Marks Act, the Designs Act, the Patents Act and the Utility Models Act shall not apply to the Faeroe Islands and Greenland, but may by Royal Ordinance be put into force for the Faeroe Islands and Greenland with such deviations as the circumstances of the Faeroe Islands and Greenland may require.
- 3) Section 71(3) in the wording of this Act entered into force on 1 January 2014, cf. Act No. 639 of 12 June 2013.
- 4) Section 77(1) in the wording of this Act entered into force on 1 April 2015, cf. Act No. 309 of 28 March 2015.
- 5) Part 10 C on Community patents, etc. is not included in this Consolidate Act since the date of entry into force of the amendments which follow from section 1(xxxiv) of Act No. 1057 of 23 December 1992 to Amend the Patents Act (Ratification of the Agreement relating to Community Patents, etc.) shall be fixed by the Minister of Business and Growth, cf. section 2(2) of Act No. 1057 of 23 December 1992.
- 6) Section 98(6) in the wording of this Act entered into force on 1 April 2015, cf. Act No. 309 of 28 March 2015.
- 7) Section 98(7) in the wording of this Act entered into force on 1 April 2015, cf. Act No. 309 of 28 March 2015.
- 8) Section 100(3) in the wording of this Act entered into force on 1 April 2015, cf. Act No. 309 of 28 March 2015.
- 9) Section 100(4) in the wording of this Act entered into force on 1 April 2015, cf. Act No. 309 of 28 March 2015.