

Patent Act*

(of March 16, 1994, as last amended by the Act of October 27, 1999)

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Chapter I

General Provisions

Purpose of the Act

1. This Act regulates relationships arising in connection with legal protection of patentable inventions (hereinafter “patent protection”) in the Republic of Estonia.

Legislation providing patent protection

2. Patent protection shall be provided for by this Act, other Acts, and Regulations based on them and issued for their implementation by the Government of the Republic and the Ministers.

[26.06.1996]

Equality of rights and obligations of natural and legal persons of the Republic of Estonia and of foreign States

3. Natural and legal persons of the Republic of Estonia and of foreign States (hereinafter “persons”) shall exercise the rights and obligations prescribed by this Act on equal grounds unless the legislation of the Republic of Estonia or international agreements ratified by the *Riigikogu* [State Assembly] provide otherwise.

Implementation of international agreements

4. Where this Act is contrary to an international agreement, the provisions of the international agreement shall apply.

Chapter II Patent Protection and Patentability

Patent protection

5.—(1) Patent protection may be given to inventions of any field of technology provided that they meet the conditions for patentability provided for in Section 8 of this Act and are excluded from inventions not patentable under Section 7 of this Act.

(2) An invention is granted patent protection by registering it in the State Register of Patents pursuant to procedure prescribed by this Act. Registration of the invention in the State Register of Patents shall be deemed to be the granting of patent.

(3) Medicinal products and plant protection products containing an active substance protected by a patent may be given supplementary legal protection (hereinafter “supplementary protection”) pursuant to procedure prescribed in Chapter VIII¹ of this Act.

[16.06.1998; 27.10.1999]

Subject of invention

6.—(1) The subject of an invention can be equipment, process, material, including biological material, or their combination.

(2) The following shall not be regarded as the subject of an invention:

1. discoveries, including the description of the formation or development of the human body or the sequence of a human gene or part of it, scientific theories and mathematical methods;
2. schemes, rules, instructions and methods for performing economic and mental acts;
3. projects and schemes of structures, buildings and territories;
4. conventional signs;

5. algorithms and programs for computers;
6. design solutions;
7. mere presentations of information;
8. plant or animal varieties.

(3) For the purposes of this Act, a biological material is any material, including microorganisms, which contains genetic information and is capable of reproducing itself or being reproduced in a biological system.

[27.10.1999]

Inventions not patentable

7.—(1) The following shall not be protected with patents:

1. inventions contrary to *ordre public* and morality;
2. methods for treatment of the human or animal body and diagnostic methods practised on the human or animal body;
3. layout-designs of integrated circuit;
4. [repealed—16.06.1998]

(2) The following biotechnological inventions shall not be protected with patents:

1. processes for cloning human beings;
2. processes for modifying the genetic identity of human beings;
3. processes for using human embryos for commercial purposes, including processes prohibited by the Artificial Insemination and Embryo Protection Act (RT I 1997, 51, 824);
4. processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to the health care of human beings or animals, and also animals resulting from the use of such processes;
5. processes which are biological in essence and are used for deriving biological materials, producing plant or animal varieties, except microbiological processes for deriving microorganisms;
6. biotechnological inventions that can be used solely for one particular plant or animal variety.

(3) For the purposes of this Act, a process which is biological in essence and used for deriving biological materials or for producing plant or animal varieties is a process which is entirely based on natural phenomenon, including crossing and selection.

(4) For the purposes of this Act, a microbiological process is any process using a microorganism or aimed at the deriving of a microorganism.

[27.10.1999]

Classification of inventions

7¹.—Inventions are classified according to the international patent classification adopted under the Strasbourg Agreement Concerning the International Patent Classification (RT II 1996, 4, 15).

Conditions for patentability

8.—(1) An invention shall be deemed to be patentable if it is new, involves an inventive step and is industrially applicable.

(2) An invention shall be deemed to be new if it is not anticipated by the prior art. 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 prior to the date of filing of the patent application or, if priority is claimed, prior to the priority date. When determining novelty, the contents of patent applications filed earlier with the Patent Office and of utility model registration applications filed earlier with the Patent Office pursuant to the Utility Model Act (RT I 1994, 25, 407; 35, statement; 1996, 49, 953) shall be taken into account according to their filing date or, if priority is claimed, the priority date, provided that the patent applications have been published pursuant to Section 24 of this Act and the utility model registration applications have been published pursuant to Section 33 of the Utility Model Act.

(3) When determining the state of the art, the information disclosed within 12 months prior to the filing date of the patent application or, if priority is claimed, prior to the priority date by a person having the right to the patent pursuant to Section 12 of this Act or by another person having obtained information from the said person according to his will or against it, shall not be taken into account.

(4) An invention shall be deemed to involve an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art.

(5) An invention shall be considered industrially applicable if it can be made or used in the economy.

Unity of invention

9.—(1) Each patent application shall relate to one invention only or to a combination of objects of invention linked together by a unified inventive concept.

(2) Where the patent application contains several independent inventions, the applicant may, upon suggestion from the Patent Office or on his own initiative, divide the application into a number of independent applications and file them pursuant to Sections 19 and 20 of this Act within a term prescribed by the Patent Office.

Extent of patent protection and patent claims

10.—(1) The extent of patent protection shall be defined by the terms of the patent claims. The description of the invention, the drawing and other illustrative material shall be used to interpret the patent claims.

(2) The claims shall constitute a clear, precise and concise definition of the subject matter of the invention for which patent protection is sought. The subject matter of the invention shall be presented in the patent claims as a set of essential features of the invention. The patent claims consist of one claim or several claims.

Priority

11.—(1) Priority shall be the privilege of a person, having first filed a patent application or a utility model registration application, to apply for patent protection for an invention. From the filing date of the first patent application or utility model registration application the said person shall have privilege over another person who files a patent application for the same invention later. The date of filing with the Patent Office of the first patent application or utility model registration application is deemed to be the priority date.

(2) Where the patent application has been filed with the Patent Office within 12 months after the filing date of the first patent application or utility model registration application, priority can be established, upon claiming it, in the following cases:

1. according to the date of filing the first patent application or utility model registration application in any State party to the Paris Convention for the Protection of Industrial Property (RT II 1994, 4/5, 19) or to the World Trade Organization;

2. according to the date of filing the first patent application or utility model registration application in a State not party to the Paris Convention or to the World Trade Organization provided that the said State guarantees the same conditions for the first patent application or utility model registration application filed in the Republic of Estonia.

(3) If priority is claimed, priority may be established for a patent application, filed on the basis of corrections and supplementations to the previous patent application changing the subject matter of the invention, according to the date of filing of the said corrections and supplementations with the Patent Office.

(4) If priority is claimed, priority may be established for a patent application, having been divided from the previous patent application, according to the priority date of the previous patent application.

(5) If priority is claimed, priority may be established for a patent application filed with the Patent Office within 12 months by the same applicant in respect of the same invention according to the filing date of the previous patent application or utility model registration application, provided that the previous patent application or utility model registration application has not been published and it has not served as a basis for claiming priority for any other patent application or utility model registration application. Where the previous patent application is pending, it shall be considered withdrawn.

(6) If priority is claimed, priority may be established for a patent application according to the filing dates of several earlier filed patent applications or utility model registration applications.

(7) The applicant must claim priority in the patent application. The documents certifying the claim for priority shall be presented in the patent application or within 16 months from the priority date. The documents certifying the claim for priority are not required if the priority claim is based on a first patent application or utility model registration application filed in the Republic of Estonia.

Chapter III **Right to Apply for Patent**

Right to patent

12.—(1) The right to apply for a patent and to become a patentee shall belong to the author of the invention and to his legal successor.

(2) Where the invention has been made in the course of fulfilling a contractual or work assignment, the right to apply for a patent and to become a patentee shall belong to the author or to another person pursuant to the contract or contract of employment.

Author of invention

13.—(1) The author of an invention (hereinafter “author”) shall be the natural person who, through his inventive activities, has made the invention.

(2) Where the invention has been made through combined inventive activities of several natural persons, they shall enjoy co-authorship.

(3) Upon co-authorship the authors shall enjoy all the rights conferred by authorship together, if they have not concluded an agreement in writing regulating otherwise.

(4) Where two or more persons apply for a patent for the same invention independently of each other and different natural persons have been designated as authors, that natural person shall be deemed to be the author who has been designated as the author in an earlier filed patent application or in a patent application with an earlier priority date if, before the publication under this Act, the said application has not been withdrawn or has not been rejected or deemed to be withdrawn by the Patent Office.

(5) Upon patent applications for the same invention with the same filing date, or upon patent applications with the same priority date, all natural persons indicated as authors in the said patent applications shall be deemed to be authors upon granting the patent.

(6) Authorship is inalienable and unspecified in term.

(7) The author has the right to the name of the author and he may:

1. demand the disclosure of his name as the author;
2. prohibit the disclosure of his name as the author;
3. cancel the prohibition of the disclosure of his name at any moment.

(8) The author shall be entitled to a fair income from the income received from the invention.

(9) The economic rights of the author are alienable and inheritable.

[27.10.1999]

Chapter IV **Exclusive Right of Patentee**

Patentee

14.—(1) Patentee shall be the person to whom the invention protected by a patent belongs. The patentee shall have exclusive right to possess, use and dispose of the patent and

to demand that all other persons avoid the infringement of those rights and eliminate the results of the infringement.

(2) Such person shall be deemed to be a patentee whose name has last been entered in the State Register of Patents as the patentee.

(3) The exclusive right of a patentee may be limited solely by this Act or by the rights of other persons.

Exclusive right of patentee

15.—(1) The exclusive right of the patentee means that during the term of the patent a third party shall not be allowed, without the consent of the patentee, to:

1. [repealed—27.10.1999]

2. make, use, distribute, sell or offer for sale patented products, or obtain (including the import) those products for the aforesaid purposes;

3. make, sell or offer for sale essential components of a patented product or obtain and export them with the purpose of making or assembling the product, except where components are other staple products;

4. use a patented process or to offer it for use to a third party;

5. use, distribute, sell or offer for sale a product made according to a patented process, or obtain (including the import) those products for the aforesaid purposes.

(2) If the process of making a product has been patented, the making, use, distribution, selling, offering for sale or obtaining (including the import) of a similar product for the aforesaid purposes without the consent of the patentee shall be deemed to be the infringement of the exclusive right of the patentee, unless it is proved that the similar product has been made according to a different process.

[16.06.1998; 27.10.1999]

Extension of exclusive right of patentee

15¹.—(1) If the biological material has been patented, the exclusive right of the patentee shall extend to any other biological material with the same qualities which has been derived from that biological material through propagation or multiplication in an identical or divergent form.

(2) If the process of obtaining of the biological material has been patented, the exclusive right of the patentee shall extend to any other biological material with the same qualities which has been derived from the biological material produced by the patented process through propagation or multiplication in an identical or divergent form.

(3) If an invention contains genetic information, the exclusive right of the patentee shall extend to the entire biological material containing this invention and functioning according to this genetic information, except the human body and parts of it.

[27.10.1999]

Proceedings non-infringing exclusive right of patentee

16.—The following proceedings shall not be considered as infringement of the exclusive right of a patentee:

1. the use of a patented invention on board (in the body, machinery, tackle, gear and in other accessories) of vessels of other States if those vessels sojourn in the territorial waters of the Republic of Estonia temporarily or accidentally, provided that the invention is used exclusively for the needs of the vessel;

2. the use of a patented invention in the construction of aircraft and land vehicles of other States or in their additional devices, or in operating the vehicles and the devices, if those vehicles sojourn in the Republic of Estonia temporarily or accidentally;

3. the use of a patented invention in experiments concerning the invention itself;

4. the extemporaneous preparation for individual cases in a pharmacy of a medicine containing a patented invention in accordance with a medical prescription, and its use;

5. the private and non-commercial use of a patented invention provided that it does not infringe the interests of a patentee;

6. the use, distribution, selling or offering for sale of a patented invention by the patentee or with his consent in the Republic of Estonia;

7. the propagation or multiplication of a biological material put on the market by the patentee or with his consent if this propagation or multiplication is necessary for the use of the biological material and the biological material derived from such propagation or multiplication is not multiplied for any other purposes.

[27.10.1999]

Right of prior use

17.—(1) Any person who, before the filing of a patent application for the same invention by another person, industrially used the invention in the Republic of Estonia in good faith independently of the applicant, may continue to use the invention, retaining the general character of the use. The use shall be considered as done in good faith unless the user knew or should have known that a patent application was intended to be filed for the invention.

(2) The right of prior use shall also belong to any person having in good faith made significant arrangements for the industrial use of the invention in the Republic of Estonia.

(3) The right of prior use can only be transferred to another person together with the enterprise where the right of prior use has emerged or where it was intended to be used.

Exhaustion of rights

17¹. The patentee shall not be entitled to prohibit further commercial use of a product protected by a patent which has been put on the market by him or with his consent in the territory of the Republic of Estonia or of any member State of the Agreement on the European Economic Area.

[27.10.1999]

Provisional protection

18.—(1) The invention shall be given provisional protection from the filing date of the application until the date of publication of a notice of the grant of the patent.

(2) Any person starting or continuing to use the invention after the patent application has been published pursuant to Section 24 of this Act, shall be deemed, after the publication

of a notice of the grant of the patent, to be an infringer of the patentee's exclusive right if he does not enjoy the right of prior use pursuant to Section 17 of this Act.

(3) Any person who started to use the invention during the period between the filing date of the application and the publication date of the application shall not be deemed to be an infringer of the patentee's exclusive right unless he knew or should have known that an application for the invention had been filed, and unless the applicant sent him a notification in writing about the filing of the application before the publication of the said application by the Patent Office. A person whom the applicant has notified of filing an application shall be deemed, after the publication of a notice of the grant of the patent, to be an infringer of the patentee's exclusive right from the date of receiving the notification about the filing of an application if he does not enjoy the right of prior use pursuant to Section 17 of this Act.

(4) The extent of provisional protection shall be established by the contents of the patent claims contained in the published application. After the grant of the patent the extent of provisional protection shall be adjusted to the patent claims of the granted patent.

Chapter V **Patent Application and its Examination**

Patent application

19.—(1) The patent application shall contain the following documents:

1. the request for the grant of a patent, containing information about the applicant and the author, and the title of the invention;
2. the description of the invention disclosing the subject matter of the invention in a manner sufficiently clear and complete that it may be carried out by a person skilled in the art;
3. the patent claims containing one or more claims;
4. the drawing or other illustrative material referred to in the description;
5. the document certifying the deposit of biological material, including a microorganism strain if the subject of the invention is biological material or the invention presumes the use of biological material and if the said biological material is not available to the public and in the description of the invention it cannot be described in a way that would enable a person skilled in the art to carry out the invention;
6. the abstract of the subject matter of the invention;
7. the document certifying the payment of the State fee;
8. the authorisation if the patent application is filed through an Estonian patent attorney.

(2) Formal and substantive requirements for the documents contained in the patent application shall be established by the Government of the Republic or by a Minister on the authorisation of the Government of the Republic.

(3) The patent application shall be filed in the Estonian language, except the abstract of the subject matter of the invention that shall be filed in the Estonian and the English language.

[16.06.1998; 27.10.1999]

Filing of patent application

20.—(1) The patent application shall be filed with the Patent Office.

(2) The applicant may independently file a patent application and arrange matters connected with the applying for and maintaining of a patent, or it may be done through an Estonian patent attorney residing in and citizen of the Republic of Estonia (hereinafter “patent attorney”). The authority of the patent attorney shall be established in the authorisation granted by the applicant.

(3) Persons having a residence or seat outside the Republic of Estonia shall arrange matters connected with the applying for and maintaining of a patent in the Republic of Estonia only through patent attorneys. The applicant shall authorise the patent attorney upon filing the patent application or within three months from the date of receipt of the patent application at the Patent Office.

(4) The State fee shall be paid upon filing the patent application or within one month from the date of receipt of the application at the Patent Office.

(5) In the event of more than 10 patent claims, a supplementary State fee shall be paid for every additional claim commencing with the eleventh.

(6) The procedure for filing patent applications shall be established by the Government of the Republic or by a Minister on the authorisation of the Government of the Republic.

[16.06.1998]

Examination on filing

21.—(1) After the receipt of the patent application, the Patent Office shall examine the existence of documents prescribed by Section 19 of this Act.

(2) The Patent Office shall refuse to approve the patent application for processing in the following cases:

1. the request for the grant of a patent is missing, or it does not designate the applicant, or the request for the grant of a patent is not filed in the Estonian language;

2. the description is missing;

3. the description is not in the Estonian language and the translation of the description into the Estonian language is missing, and it is not filed within three months from the date of receipt of the patent application at the Patent Office;

4. [repealed—27.10.1999]

5. the document certifying the payment of the State fee is missing and it is not filed within one month from the date of receipt of the patent application at the Patent Office;

6. the requirements prescribed by Section 20(3) of this Act are not satisfied.

(3) Upon refusal to approve the patent application for processing the State fee shall be refunded.

(4) The Patent Office shall accord a number to a patent application accepted for processing and notify the applicant in writing of the filing date and the number of the patent application.

(5) The filing date of a patent application approved for processing shall be the date of receipt of the patent application at the Patent Office except in cases where the documents

received by the Patent Office do not contain a drawing or other illustrative material necessary for disclosing the subject matter of the invention referred to in the description. If the drawing or other illustrative material is missing, the Patent Office shall invite the applicant to furnish it within one month. If the missing drawing or other illustrative material is furnished by the due date, the filing date of the patent application shall be the date of receipt of the drawing or other illustrative material at the Patent Office. If the missing drawing or other illustrative material is not furnished by the due date or the applicant refuses to furnish them, all references in the patent application to the said document shall be deemed to be repealed and the filing date of the patent application shall be the date of receipt of the patent application at the Patent Office.

[27.10.1999]

*Files of patent applications, access to and
release of information therefrom*

21¹.—(1) The files of patent applications are a structured body of data on patent application documents accepted for processing and information on the examination thereof. Information on a patent application and on the examination thereof is stored in the files until the patent application dossier is closed.

(2) Access to the files and release of information from the files of patent applications is generally prohibited. It is permitted to release only the following information: the title of the invention, the index of the International Patent Classification, the number of the patent application, the filing date of the patent application, the priority data, the name and address of the applicant and the name of the representative of the applicant.

(3) Access to a patent application dossier shall be granted to the applicant, or to a person having the written consent of the applicant or notified by the applicant in writing of the filing of the patent application and of the applicant's right to apply for a patent and to become a patentee.

(4) After the publication of the patent application, anyone may have access to the patent application dossier.

(5) No information on the author is released if the author has prohibited the revelation of his name.

(6) Information from the files of patent applications is released upon payment with the exception of release of information to State agencies which have supervisory authority or to a court. A State fee shall be paid for the release of information.

(7) The files of patent applications shall be established by the Government of the Republic or by a Minister on the authorisation of the Government of the Republic.

[16.06.1998]

Examination as to formal requirements of patent application

22.—(1) The Patent Office shall examine:

1. the form and substance of the application documents;
2. the subject of the invention;
3. the unity of the invention.

(2) If priority is claimed, the Patent Office shall examine the corresponding documents certifying it.

(3) Upon deficiencies regarding the form and substance of application documents or other factors preventing the examination of the patent application, the Patent Office shall notify the applicant of this in writing and shall prescribe a due date for removing the deficiencies or for providing explanations.

(4) The Patent Office shall determine a priority date for the patent application.

(5) The Patent Office shall commence the substantive examination provided that the patent application meets the provisions of Sections 6, 7, 9 and 19 of this Act.

(6) Where the subject of the invention does not comply with the provisions of Sections 6 or 7 of this Act, or where the applicant fails to remove the deficiencies regarding the form and substance of application documents or to provide explanations, the Patent Office shall make a decision on rejecting the application. The Patent Office shall notify the applicant in writing of the decision on rejecting the patent application.

[27.10.1999]

Substantive examination

23.—(1) In the course of the substantive examination the Patent Office shall examine the compliance of the invention with the conditions for patentability pursuant to Section 8 of this Act.

(2) The applicant may, pursuant to Article 15(5) of the Patent Cooperation Treaty done at Washington on June 19, 1970 (RT II 1994, 6/7, 21), file a request for international-type search. Upon filing the request the applicant shall pay the State fee and the payment for international-type search.

(3) The Patent Office may demand that the applicant provide oral or written explanations and correct or supplement the claims, the description, the drawing or other illustrative material and the abstract of the subject matter of the invention. The Patent Office shall prescribe a term of two to six months for providing explanations or presenting corrections and supplementations.

(4) The Patent Office shall be entitled to demand that the applicant furnish copies of decisions made by foreign patent offices regarding his analogous applications, it shall also be entitled to exchange information on the patent application with patent offices of other States.

(5) If the Patent Office considers that the subject of the invention is protectable with a patent pursuant to Sections 6 and 7 of this Act and the subject matter of the invention in the wording of the patent claim, if compared with the state of the art, meets the conditions for patentability provided for in Section 8 of this Act and the form and substance of the application documents are in compliance with the formal and substantive requirements established pursuant to Section 19(2) of this Act, the Patent Office shall terminate the substantive examination, make the decision on granting a patent and notify the applicant of this in writing.

(6) If the Patent Office considers that the subject of the invention is not patentable pursuant to Sections 6 and 7 of this Act or the subject matter of the invention in the wording of the patent claim, if compared with the state of art, does not meet the conditions for patentability provided for in Section 8 of this Act or the form or substance of the application documents is not in compliance with the formal and substantive requirements established pursuant to Section 19(2) of this Act or the applicant fails to provide explanations or present

corrections and supplementations required pursuant to subsection (3) of this Section or to furnish copies required pursuant to subsection (4) of this Section, the Patent Office shall terminate the substantive examination, make the decision on rejecting the patent application and notify the applicant of this in writing.

[27.10.1999]

Publication of patent application

24.—(1) For the purposes of this Act, the publication of a patent application is the publication of the documents of the patent application referred to in clauses 2, 3, 4 and 6 of Section 19(1) of this Act.

(2) The Patent Office shall publish the patent application after the expiration of 18 months from the filing date of the patent application or, if priority is claimed, from the priority date.

(3) Upon request from the applicant, the patent application shall be published prior to the end of the term referred to in subsection (2) of this Section.

(4) The application shall not be published in the following cases:

1. the application has been withdrawn or is deemed to be withdrawn;
2. the application has been rejected;
3. the publication of the application is prevented by deficiencies regarding the form and substance of application documents.

(5) The applicant shall be notified in writing of the publication of the application.

(6) The Patent Office shall publish a notice of the publication of the patent application in its Official Gazette.

(7) The publication date of the notice referred to in subsection (6) of this Section shall be deemed to be the date of publication of the application.

(8) The procedure for publishing patent applications shall be established by the Government of the Republic or by a Minister on the authorisation of the Government of the Republic.

[16.06.1998; 27.10.1999]

Corrections and supplementations to patent application

25.—(1) The applicant may correct and supplement the patent application in the course of the examination procedure, without changing the subject matter of the invention as disclosed in the patent application at the filing date of the application.

(2) Corrections and supplementations change the subject matter of the invention if they contain essential features of the invention missing in the description, drawing or other illustrative material at the filing date of the patent application.

(3) Where the corrections and supplementations change the subject matter of the invention, the Patent Office shall make a decision on rejecting them, notifying the applicant of this in writing.

(4) After the publication of the patent application pursuant to Section 24 of this Act the applicant cannot make corrections and supplementations broadening the extent of patent protection.

(5) After the Patent Office has made a decision pursuant to Section 23(5) or (6) of this Act, the applicant may once correct and supplement the application within two months from the date of the said decision, paying the State fee. The State fee shall not be paid when the correction involves obvious mathematical or clerical errors. The Patent Office shall be entitled to make a new decision on the grounds of the corrections and supplementations.

(6) In the course of the examination procedure the Patent Office may solely make editorial corrections in the application documents without consulting with the applicant. The abstract of the subject matter of invention may be changed without consulting with the applicant.

[27.10.1999]

Withdrawal of patent application

26.—(1) The applicant may file a request for withdrawal of a patent application and withdraw a patent application under examination. Application documents shall not be returned.

(2) Where several persons apply for a patent, the request for withdrawal of the patent application may be filed with the consent of all those persons.

(3) The Patent Office shall consider the application withdrawn in the following cases:

1. the applicant has failed, during the examination of formalities, to respond to the invitation of the Patent Office regarding the providing of explanations or correcting or supplementing application documents within three months from the due date prescribed pursuant to Section 22(3) of this Act;

2. the applicant has failed, during the substantive examination, to respond to the invitation of the Patent Office regarding the providing of explanations or correcting or supplementing application documents within three months from the due date prescribed pursuant to Section 23(3) of this Act;

3. the applicant has failed to pay the prescribed State fee by the due date;

4. in cases provided for in Section 11(5) of this Act.

[27.10.1999]

Suspension of examination procedure

27.—(1) Where the applicant, during the examination, fails to respond by the due date prescribed pursuant to Section 22(3) or 23(3) of this Act, the Patent Office shall suspend the examination procedure. The examination procedure shall be resumed if the applicant, within three months from the said due date, provides the response and pays the State fee.

(2) If the application does not comply with the unity of invention, the Patent Office shall suspend the examination procedure until the due date prescribed for the applicant for filing independent patent applications pursuant to Section 9(2) of this Act.

(3) If the applicant has filed, pursuant to Section 23(2) of this Act, a request for international-type search, the Patent Office may suspend the examination procedure until the receipt of the said search report at the Patent Office.

(4) The applicant shall be notified in writing of the suspension of examination procedure.

[27.10.1999]

Termination of examination procedure

28.—(1) The Patent Office shall terminate the examination procedure of an application which is withdrawn or deemed to be withdrawn.

(2) The applicant shall be notified in writing of the termination of examination procedure.

Resuming of examination procedure

29.—(1) The applicant may require the resuming of the examination procedure if the Patent Office has terminated the examination procedure, deeming the application to be withdrawn pursuant to clauses 1, 2 or 3 of Section 26(3) of this Act, provided that the transactions specified in the said provisions failed due to *force majeure* or other impediment irrespective of the applicant and the patent attorney representing him.

(2) The Patent Office shall resume the examination procedure provided that the applicant proves the existence of the impediment and performs the prescribed transactions within two months after the removal of the impediment, paying the State fee.

(3) The request for resuming examination procedure may be submitted within one year from the due date of the failed transaction.

(4) The provisions of subsections (1), (2) and (3) of this Section shall not extend to cover Sections 9(2), 35(6) and 42 of this Act.

[27.10.1999]

Appealing against decisions of Patent Office during examination procedure

30.—(1) The applicant may appeal against the decision of the Patent Office pursuant to procedure prescribed by Sections 41 to 54 of the Industrial Design Protection Act (RT I 1997, 87, 1466; 1998, 108/109, 1783) at the Industrial Property Board of Appeal (hereinafter “Board of Appeal”) established pursuant to the Trade Marks Act (RT 1992, 35, 459; RT I 1998, 15, 231) or in court.

(2) The applicant may file an appeal with the Board of Appeal within two months from the date of making the decision, paying the State fee.

(3) The Board of Appeal shall be entitled to:

1. dismiss the appeal and retain the decision of the Patent Office unchanged;
2. change or revoke the decision of the Patent Office and make a new decision;
3. revoke the decision of the Patent Office and enjoin the Patent Office to continue the examination procedure.

(4) Upon the granting of the appeal the State fee shall be refunded.

(5) Upon partial granting of the appeal the Board of Appeal shall prescribe the amount of the State fee to be refunded.

[16.06.1998; 27.10.1999]

Cessation of examination procedure

31. The examination procedure shall cease with granting a patent or with rejecting the patent application.

[16.06.1998]

Chapter VI International Application

Definition of international application

32.—(1) International application means a patent application filed under the Patent Cooperation Treaty done at Washington on June 19, 1970 (hereinafter “Patent Cooperation Treaty”).

(2) The Patent Office shall act as a receiving office, a designated office and an elected office as defined in Article 2 of the Patent Cooperation Treaty.

(3) The Patent Office shall act as a receiving office for the international applications of citizens or residents of the Republic of Estonia.

(4) An international application shall be drawn up pursuant to the Patent Cooperation Treaty and its Implementing Regulations and Administrative Instructions, and it shall be filed with the Patent Office as the receiving office in the English or German language, paying the State fee and the payments prescribed by the Patent Cooperation Treaty.

(5) The Patent Office shall act as a designated office or an elected office for those international applications in which the Republic of Estonia has been designated or elected.

(6) An international application in which the Republic of Estonia is designated shall be deemed to be equivalent to patent applications filed pursuant to Sections 19 and 20 of this Act.

(7) An international patent application in which the Republic of Estonia is designated shall be deemed to have been filed with the Patent Office at the international filing date accorded by the receiving office under the Patent Cooperation Treaty.

(8) The Patent Office shall carry out examination of those international patent applications in which the Republic of Estonia has been designated.

(9) The procedure for payments prescribed by the Patent Cooperation Treaty shall be established by the Government of the Republic or by a Minister on the authorisation of the Government of the Republic.

(10) The procedure for filing international patent applications with the Patent Office shall be established by the Government of the Republic or by a Minister on the authorisation of the Government of the Republic.

[16.06.1998]

Specifications of international application processing

33.—(1) For approval of an international patent application for processing, the applicant shall, within 20 months from the priority date, file with the Patent Office a

translation of the international patent application into the Estonian language and pay the State fee.

(2) If the applicant has, within 19 months from the priority date, elected the Republic of Estonia to use the report of international preliminary examination, he shall file the translation referred to in subsection (1) of this Section and pay the State fee within 30 months from the priority date.

(3) In justified cases the applicant may be given an extension of two months for filing a translation of an international patent application referred to in subsection (1) of this Section, provided that upon the filing of the translation he pays a supplementary State fee.

(4) The applicant may, within six months from the date of filing the translation of an international application, supplement and correct the claims, description, drawing and other illustrative material, provided that the supplementations and corrections do not change the subject matter of the invention as disclosed in the international application on its filing date.

(5) If the applicant should be represented by a patent attorney pursuant to Section 20(3) of this Act, the applicant must authorise the attorney within six months from the due date prescribed pursuant to subsection (1) or (2) of this Section.

(6) An international application shall lose its effect provided for in Section 32(6) and (7) of this Act in the following cases:

1. the provisions of items (i) and (ii) of Article 24(1) of the Patent Cooperation Treaty are applied;

2. the applicant has failed to comply with the requirements of subsection (1), (2) or (3) of this Section;

3. the applicant withdraws the request for international preliminary examination or the request for electing the Republic of Estonia after the expiration of the term provided for in subsection (1) of this Section;

4. the applicant has failed to comply with the requirements of subsection (5) of this Section.

(7) If the applicant has elected the Republic of Estonia to use the international preliminary examination report, the Patent Office shall not be entitled to request that the applicant furnish examination decisions of patent offices of States designated in the international application.

(8) If part of the international application has not been subject to international preliminary examination or international search for the reason of the application not complying with the unity of invention, and the applicant has failed to pay the State fee prescribed by the Patent Cooperation Treaty for additional international search or preliminary examination, the Patent Office shall examine the legitimacy of the decision of the International Searching Authority or the International Preliminary Examination Authority on excluding a part of the international application from the international search or international preliminary examination. If the decision proves correct, the parts not complying with the unity of invention shall be deemed to be withdrawn from the international application. In the opposite case the Patent Office shall proceed with the examination of the international patent application in full extent. The Patent Office shall notify the applicant of its decision in writing.

(9) The Patent Office shall apply the provisions of Section 9(2) of this Act to the parts of the international application not complying with the unity of invention if the applicant,

within two months from the date of the decision of the Patent Office referred to in subsection (8) of this Section, submits a corresponding request.

(10) If the receiving office has refused to recognise the international filing date or has declared that the international application is deemed to be withdrawn, or if the International Bureau of the World Intellectual Property Organization (hereinafter “International Bureau”) has made a decision pursuant to Article 12(3) of the Patent Cooperation Treaty, or if the receiving office has declared that the designation of the Republic of Estonia is deemed to be withdrawn, the applicant shall be entitled to, within two months from receiving the corresponding notification or decision, request the examination of the international application in the Republic of Estonia, and request that the International Bureau transmit a copy of the international application to the Patent Office. The applicant shall file with the Patent Office the translation of the international application and in prescribed cases information regarding the patent attorney and pay the prescribed State fee within the term prescribed by the Patent Office. The Patent Office shall examine the legitimacy of the decision of the receiving office or the International Bureau and notify the applicant of the findings. If the decision of the receiving office or the International Bureau is not legitimate, the patent application shall be examined as an international application.

(11) If the examination of an international application has been terminated for the reason of the applicant failing, due to *force majeure* or other impediment irrespective of him, to perform, by the due date, any transactions prescribed by the receiving office, the International Searching Authority, the International Preliminary Examination Authority or the International Bureau, or any transactions provided for in subsections (1) and (2) of this Section, the Patent Office shall resume the examination of the international application in the Republic of Estonia, provided that the applicant complies with the provisions of Section 29(2) and (3) of this Act.

[27.10.1999]

*Files concerning international applications and examination of
international applications, and access to and
release of information therefrom*

33¹.—(1) The files concerning international applications and examination of international applications is a structured body of data concerning international patent application documents filed with the Patent Office as a receiving office pursuant to Article 2 of the Patent Cooperation Treaty, and information on the examination thereof. Information on an international application and on the examination thereof is stored in the files until the international application examination dossier is closed.

(2) Access to and release of information from the files concerning international applications and examination of international patent applications is prohibited until the publication of the international application pursuant to Article 21 of the Patent Cooperation Treaty.

(3) After the publication of an international application pursuant to Article 21 of the Patent Cooperation Treaty, anyone may have access to the international patent application examination dossier.

(4) Information from the files concerning international patent applications and examination of international patent applications is released upon payment with the exception of release of information to State agencies with supervisory authority or to a court. A State fee shall be paid for the release of information.

(5) The files concerning international applications and examination of international applications are established by the Government of the Republic or a Minister on the authorisation of the Government of the Republic.

[16.06.1998]

Chapter VII **State Register of Patents and Grant of Patent**

State Register of Patents

34.—(1) The State Register of Patents (hereinafter “Register”) is maintained for inventions that have been deemed to meet the conditions for patentability.

(2) The Patent Office shall be the chief and authorised processor of the Register.

(3) The registry secretary shall arrange the maintenance of the Register and make entries in the Register.

(4) The Register shall be maintained as an entry book on paper carrier or as a computer database, storing the entries as print-outs.

(5) The language of the Register is Estonian. Foreign language documents shall be submitted to the authorised processor together with an Estonian translation.

(6) The Register consists of the entry book, the patent application examination dossiers and the registry dossiers. The entry book consists of registry cards that are bound into the volumes of the entry book.

(7) The expenditure for maintenance of the Register shall be covered from the State budget through the budget of the Patent Office.

(8) The statutes for maintenance of the Register shall be approved by the Government of the Republic.

[16.06.1998; 27.10.1999]

Registration of invention in Register

35.—(1) An invention shall be registered in the Register by entering the data of the registration of invention (hereinafter “registration”) in the entry book on the basis of the decision made by the Patent Office, the Board of Appeal or the court to grant a patent.

(2) The registration data are the following:

1. the number of the registration;
2. the date of registration;
3. the title of the invention;
4. the index of the International Patent Classification;
5. the given name and surname and address of the author of invention;
6. the given name and surname, residential address or address of the seat of enterprise and zip code of the patentee; if the patentee is a legal person, the name, address and zip code of the seat of the patentee;
7. the date of the beginning of the term of registration;

8. the date of the end of the term of registration;
9. if a patent attorney has been appointed, the given name and surname of the attorney;
10. if a common representative has been appointed and he is a natural person, the given name and surname of the natural person; if the common representative is a legal person, the name of the legal person;
11. the number of the patent application;
12. the filing date of the patent application;
13. priority data (priority date, State, number of application);
14. the number and filing date of an earlier patent application from which the patent application has been divided;
15. the number and filing date of an earlier, continued patent application;
16. the filing date of corrections and supplementations to the earlier patent application changing the subject of the invention;
17. the data of the international application;
18. the publication date of the patent application;
19. the date of the disclosure of information referred to in Section 8(3) of this Act;
20. the data of the deposit of a biotechnological material, including microorganism strain;
21. the data of the payment of the annual State fee paid for the maintaining of the patent application;
22. the patent claims;
23. the description of the invention;
24. the drawing or other illustrative material;
25. the data of the supplementary protection of a medicinal product;
26. the data of the supplementary protection of a plant protection product.

(3) The patent claim, the description of the invention and the drawing or other illustrative material shall be kept in the registry dossier.

(4) The applicant mentioned in the decision on granting a patent shall be entered in the Register as a patentee.

(5) The registrations are numbered in the order in which the inventions are registered, starting from number 02932 as a continuation of the Registry numeration which was discontinued in 1940.

(6) For registering the invention in the Register, the applicant shall pay the State fee within three months from the date of making the decision referred to in subsection (1) of this Section. If the State fee has not been paid within the specified term, the patent application shall be deemed to be withdrawn.

(7) The registration data shall be entered in the Register within three months from the date of paying the State fee specified in subsection (6) of this Section.

(8) The Patent Office shall publish in its Official Gazette a notice of the grant of the patent. The publication date of the notice of the grant of the patent shall be entered in the entry book.

(9) The registration shall become valid on the publication date of the notice of the grant of the patent.

[16.06.1998; 27.10.1999]

Access to and release of data from Register

35¹.—(1) The Register shall be public. Everyone shall have the right to examine the patent application examination dossier, the registry dossier and the entry book and to obtain copies thereof.

(2) If the author has prohibited the revelation of his name, no information on the author shall be released from the Register.

(2¹) Information containing a business secret and not subject to disclosure shall not be released from the Register if the applicant for supplementary protection has defined the business secret pursuant to Section 39⁵(6) of this Act.

(3) Written information from the Register shall be released upon payment with the exception of release of information to State agencies with supervisory authority or to a court. A State fee shall be paid for the release of information.

[16.06.1998; 27.10.1999]

Maintenance and storage of Register

35².—(1) The Register shall be maintained in the offices of the Patent Office; the removal of the Register from the offices shall be prohibited.

(2) The Register shall be permanently stored in the Patent Office archives.

[16.06.1998]

Liability of chief processor

35³. Damage arising from the unlawful actions of the chief processor shall be compensated for by the State.

[16.06.1998]

Patent specification

35⁴.—(1) The patent specification shall contain the description of the invention, the patent claims, the drawing and other illustrative materials, the abstract of the subject matter of the invention and the following information:

1. the name of the agency having issued the patent specification;
2. the title and number of the document;
3. the title of the invention;
4. the index of the International Patent Classification;
5. the given name and surname and address of the author of invention;

6. the given name and surname, residential address or address of the seat of enterprise and zip code of the patentee; if the patentee is a legal person, the name, address and zip code of the seat of the patentee;

7. if a patent attorney has been appointed, the given name and surname and address of the attorney;

8. if a common representative has been appointed and he is a natural person, the given name and surname of the natural person; if the common representative is a legal person, the name of the legal person;

9. the number and filing date of the patent application;

10. the priority data;

11. the data of the international application;

12. the data of the deposit of a biological material, including microorganism strain;

13. the date of the publication of the patent application;

14. the date of the publication of the patent specification;

15. the date of the beginning of the term of the patent.

(2) After entering the registration data in the Register, the Patent Office shall compile the patent specification.

(3) The patent specification shall be kept in the registry dossier.

(4) The patent specification shall be published on the publication date of the notice of the grant of the patent.

(5) The formal requirements and procedure for compilation of the patent specification shall be established by the Government of the Republic or by a Minister on the authorisation of the Government of the Republic.

[16.06.1998; 27.10.1999]

Letters patent

36.—(1) The letters patent is a document certifying the registration and the exclusive right of the patentee to the invention.

(2) The letters patent shall consist of the certificate and the patent specification.

(3) The certificate shall contain:

1. the name of the State—the Republic of Estonia;

2. the coat of arms of the State—the small coat of arms of the Republic of Estonia;

3. the number of the letters patent;

4. the text “The patent has been issued under Section 5 of the Patent Act that entered into force on May 23, 1994. The patent is valid for 20 years from the filing date of the patent application. For maintaining the patent, a State fee shall be paid for each year of validity. The letters patent certifies the registration and the exclusive right of the patentee to the invention disclosed in the patent specification.”;

5. the data of the agency having issued the letters patent (the name and seat of the agency, the title, name and signature of the head of the agency, the seal of the agency);

6. the date of signing the letters patent.

(4) The date of issue of the letters patent shall be the date when the head of the agency having issued the letters patent signs it. The date of issue of the letters patent shall be entered in the entry book.

(5) The number of the letters patent shall be the number of the registration.

(6) The Patent Office shall issue the letters patent to the patentee within one month from the publication date of the notice of the grant of the patent.

(7) Only one letters patent shall be issued regardless of the number of patentees.

(8) On a request from the patentee a duplicate of the letters patent may be issued for him. The duplicate shall be issued within one month from the receipt at the Patent Office of the request and of the document certifying the payment of the State fee. A notice of the issue of the duplicate shall be published in the Official Gazette of the Patent Office.

(9) The formal requirements and the order of compilation and issue of the letters patent shall be established by the Government of the Republic or by a Minister on the authorisation of the Government of the Republic.

[16.06.1998]

Chapter VIII **Validity of Patent**

Term of patent

37.—(1) The term of the patent shall be 20 years from the filing date of the patent application.

(2) For maintaining the patent application and the patent, a State fee shall be paid for each year of validity. The filing date of the patent application shall be deemed to be the beginning of the year of validity.

Premature lapse of patent

38.—(1) A patent shall lapse prematurely in the following cases:

1. upon failure in paying the annual State fee;
2. upon a corresponding request from the patentee for the invalidation of the patent;
3. upon liquidation or termination of a legal person being the patentee if the patent rights have not transferred.

(2) The Patent Office shall enter the premature lapse of the patent in the Register and publish a corresponding notice in its Official Gazette.

Amendments to patent

39.—(1) The patentee shall be entitled, during the whole term of the patent, to request the amending of the patent. The request for amendments shall be submitted to the Patent Office, paying the State fee.

(2) The patentee shall be entitled to request amendments that do not change the subject matter of invention as disclosed in the patent application at the filing date of the application.

(3) The amendments shall have a retroactive effect.

(4) The Patent Office shall publish in its Official Gazette a notice of the amendments to the patent.

(5) The patentee shall not be entitled to request amendments to the patent claims which broaden the extent of patent protection, except in cases provided for in subsection (6) of this Section.

(6) For correction of obvious mathematical and clerical errors which have limited the extent of patent protection, the patentee shall be entitled, within two years from the publication of the notice of the grant of the patent, to submit to the Patent Office a corresponding request.

(7) The broadening of the extent of patent protection, resulting from the amendments under subsection (6) of this Section, shall not restrict the rights of persons who, before the publication of the notice of the amendments, had taken into account the original extent of patent protection in their economic and business transactions.

[27.10.1999]

Chapter VIII¹ **Supplementary Protection of Medicinal Products and Plant Protection** **Products Containing Active Substance Protected by Patent**

Definition of medicinal product

39¹. For the purposes of this Act, a medicinal product means a product containing at least one active substance protected by a patent and used for the following purposes:

1. preventing and treatment of diseases in humans or animals;
2. making a medical diagnosis for humans or animals;
3. restoring, correcting or modifying physiological functions in humans or animals.

[27.10.1999]

Definition of plant protection product

39².—(1) For the purposes of this Act, a plant protection product means a product containing at least one active substance protected by a patent and used for the following purposes:

1. protection of plants or parts of plants, including fresh fruit and seeds, against harmful organisms or preventing the action of such organisms;
2. protection of plant products having undergone simple preparation (milling, drying, pressing or other processes of simple preparation) against harmful organisms or preventing the action of such organisms;
3. influencing the life process of plants or parts of plants, except nutrients;
4. preservation of plant products having undergone simple preparation;
5. destroying undesirable plants;

6. destroying undesirable parts of plants or controlling or preventing undesirable growth of plants.

(2) For the purposes of this Act, the active substance of a plant protection product, having action against harmful organisms or influencing plants, parts of plants or plant products, is :

1. a natural or manufactured chemical substance or compound of substances with additives inevitably resulting from the manufacturing process;

2. a microorganism.

[27.10.1999]

Definition of basic patent

39³. For the purposes of this Act, a basic patent means a patent which protects the active substance or their combination, a process of manufacture or use of the active substance of a medicinal product or plant protection product.

[27.10.1999]

Grant of supplementary protection

39⁴.—(1) Supplementary protection shall be granted for a medicinal product or plant protection product by extending the term of rights conferred by the registration of invention protected by a basic patent upon the expiration of the term of the basic patent.

(2) Supplementary protection shall be granted in the following cases:

1. the basic patent is valid on the filing date of supplementary protection application;
2. the medicinal product has been registered pursuant to Section 11 of the Medicinal Products Act (RT I 1996, 3, 56; 49, 954; 1997, 93, 1564; 1998, 36/37, 554; 1999, 58, 600);
3. the plant protection product has been registered pursuant to Section 12(1) of the Plant Protection Act (RT I 1994, 28, 427; 1996, 49, 953; 1998, 13, 163; 97, 1519);
4. the registration of the medicinal product or plant protection product referred to in clauses 2 and 3 of this subsection is primary and it has not been deleted;
5. the same medicinal product or plant protection product has previously not been granted supplementary protection.

(3) Supplementary protection shall be granted to the same medicinal product or plant protection product solely on the basis of one patent.

(4) On the basis of one and the same patent, supplementary protection can be granted to several different medicinal products or plant protection products.

(5) Supplementary protection grants the same rights as the basic patent and is subject to the same restrictions and obligations.

(6) The renewal of the term of rights conferred by the registration of invention upon the expiration of the term of the basic patent shall be registered in the State Register of Patents.

(7) The supplementary protection data shall be entered in the entry book.

(8) The supplementary protection data are the following:

1. the number of the supplementary protection application;

2. the filing date of the supplementary protection application;
3. the number and date of issue of the document certifying the registration of the medicinal product or the plant protection product;
4. the date of registration of the medicinal product or plant protection product;
5. the identification data of the product specified in the document certifying the registration of the medicinal product or plant protection product;
6. the number of the supplementary protection certificate;
7. the term of the supplementary protection.

[27.10.1999]

Applying for supplementary protection

39⁵.—(1) The right to apply for and to be granted supplementary protection (hereinafter “right to application”) shall belong to the owner of the basic patent or to his legal successor (hereinafter “applicant for supplementary protection”).

(2) The supplementary protection application shall be filed within six months from the date of entry into force of the registration of the medicinal product or plant protection product. If this date is earlier than the date of granting the basic patent, the supplementary protection application shall be filed within six months from the date of granting the basic patent.

(3) The supplementary protection application shall contain the following documents:

1. the request for the grant of supplementary protection;
2. the document certifying the registration of the medicinal product or the plant protection product;
3. the document certifying the payment of the State fee;
4. the authorisation if the supplementary protection application is filed through a patent attorney.

(4) The request for the grant of supplementary protection shall set out:

1. a statement requesting the grant of supplementary protection to a medicinal product or plant protection product;
2. the name and address of the applicant for supplementary protection;
3. the number of the basic patent and the title of the invention;
4. the number and date of issue of the document certifying the registration of the medicinal product or plant protection product;
5. the date of registration of the medicinal product or plant protection product;
6. the identification data of the product specified in the document certifying the registration of the medicinal product or plant protection product;
7. the given name and surname of the patent attorney if the supplementary protection application is filed through a patent attorney.

(5) The supplementary protection application may be accompanied by other documents which the applicant for supplementary protection considers to be necessary.

(6) If the documents accompanying the supplementary protection application pursuant to subsection (5) of this Section contain a business secret, the applicant for supplementary protection shall define the extent of it.

(7) The documents of the supplementary protection application shall be filed in the Estonian language.

(8) A State fee shall be paid for filing the supplementary protection application.

(9) The supplementary protection application shall be filed with the Patent Office.

(10) The formal requirements of and procedure for filing the documents of supplementary protection applications shall be established by the Government of the Republic or by a Minister on the authorisation of the Government of the Republic.

[27.10.1999]

Examination of supplementary protection application

39⁶.—(1) The Patent Office shall examine:

1. the right to application pursuant to Section 39⁵(1) and the timely filing of the supplementary protection application pursuant to Section 39⁵(2) of this Act;

2. the existence of the documents of the supplementary protection application pursuant to Section 39⁵(3) of this Act and their compliance with formal and substantive requirements;

3. the validity of the basic patent and the registration of a medicinal product or plant protection product pursuant to the document certifying it.

(2) The Patent Office shall not examine if:

1. the registration of the medicinal product or plant protection product is primary;

2. the medicinal product or plant protection product has earlier been granted supplementary protection.

(3) Upon deficiencies regarding the form and substance of the documents of supplementary protection application or other factors preventing the examination, the Patent Office shall notify the applicant for supplementary protection of this in writing and shall prescribe a term of three months for removing the deficiencies or for providing explanations.

(4) If the supplementary protection application is in compliance with subsections (1) to (3) of Section 39⁵ and clauses 1 to 3 of Section 39⁴(2) of this Act, the Patent Office shall make a decision on granting supplementary protection and shall notify the applicant of this in writing.

(5) If the right to application is missing, the supplementary protection application has not been filed timely or is not in compliance with clauses 1 to 3 of Section 39⁴(2) of this Act or if the deficiencies regarding the form and substance of the documents have not been removed or the explanations have not been provided by the due date prescribed pursuant to subsection (3) of this Section, the Patent Office shall make a decision on refusing supplementary protection and shall notify the applicant for supplementary protection of this in writing.

(6) The Patent Office shall publish notices in its Official Gazette about the filing of a supplementary protection application, the grant of supplementary protection and the refusal to grant supplementary protection. The notice shall set out:

1. the number and filing date of the supplementary protection application;
2. the name and address of the applicant for or the person having been granted supplementary protection;
3. the number of the basic patent and the title of the invention;
4. the number and the date of issue of the document certifying the registration of the medicinal product or plant protection product;
5. the date of registration of the medicinal product or plant protection product;
6. the identification data for the product specified in the document certifying the registration of the medicinal product or plant protection product;
7. the number and term of the supplementary protection certificate if supplementary protection is granted.

(7) The examination procedure for supplementary protection applications shall be established by the Government of the Republic or by a Minister on the authorisation of the Government of the Republic.

[27.10.1999]

Supplementary protection certificate

39⁷.—(1) A supplementary protection certificate is a document certifying the extension of the term of rights conferred by the registration of invention after the expiration of the term of the basic patent.

(2) The Patent Office shall issue a supplementary protection certificate to the person having applied for supplementary protection for a medicinal product or a plant protection product within one month from the date of publication of the notice of the entry concerning the extension of the term of rights conferred by the registration of invention.

(3) The formal requirements and the order of issue of supplementary protection certificates shall be established by the Government of the Republic or by a Minister on the authorisation of the Government of the Republic.

[27.10.1999]

Term of supplementary protection

39⁸.—(1) The term of supplementary protection shall be up to five years from the date of expiration of the basic patent. The date of expiration of supplementary protection cannot be later than the date of expiration of 15 years from the issue of the basic patent or from the first day of term of the document referred to in clause 2 of Section 39⁵(3) of this Act, whereby the later date is taken into consideration.

(2) For maintaining supplementary protection, a State fee shall be paid for each year of validity.

(3) The term of supplementary protection shall expire prematurely in the following cases:

1. the person having applied for supplementary protection files a request for the termination of supplementary protection;
2. the State fee for the year of validity of supplementary protection has not been paid;

3. evidence has been furnished to the Patent Office about the invalidation of the registration of the medicinal product or plant protection product.

(4) The Patent Office shall publish a notice of the premature termination of supplementary protection in its Official Gazette.

[27.10.1999]

Invalidation of supplementary protection, contestation and protection of rights

39⁹.—(1) Invalidation of supplementary protection and contestation and protection of rights conferred by supplementary protection shall be subject to the provisions of this Act regulating the contestation and protection of patent rights.

(2) Supplementary protection shall be invalidated in the following cases:

1. the supplementary protection has been granted in conflict with clauses 1 to 3 of Section 39⁴(2) of this Act;

2. the term of the basic patent has expired prematurely pursuant to Section 38 of this Act;

3. the basic patent has been invalidated pursuant to Sections 49 or 50 of this Act;

4. after the grant of the basic patent, the extent of patent protection has been limited in a way as to cause the noncompliance of the medicinal product or the plant protection product with the patent claims;

5. after the expiration of the term of the basic patent, certain grounds exist that would have justified the invalidation of the basic patent or the limitation of the extent of patent protection in a way as to cause the noncompliance of the medicinal product or the plant protection product with the patent claims.

(3) The Patent Office shall publish a notice in its Official Gazette of the invalidation of supplementary protection.

[27.10.1999]

Chapter IX
State Fee

State fee

40. In cases prescribed by this Act, State fees shall be levied for effecting transactions, issuing documents and maintaining a patent application and a patent pursuant to the provisions of the State Fees Act (RT I 1997, 80, 1344; 86, 1461; 87, 1466 and 1467; 93, 1563; 1998, 2, 47; 4, 63; 23, 321; 36/37, 552 and 553; 52/53, 771; 57, 859; 59, 941; 60, 951; 61, 979 and 985; 64/65, 1004, 1005 and 1008).

[16.06.1998]

Payment of State fees

41.—(1) State fees shall be paid by the applicant, the patentee or by any other person interested in effecting transactions prescribed by this Act or in the issue of documents or maintenance of a patent application or a patent. If another person pays the State fee for

applying for a patent, granting a patent or maintaining a patent, the consent of the applicant or the patentee shall be required.

(2) The State fee shall be deemed to be paid upon the receipt at the Patent Office, in case of an appeal at the Board of Appeal, of a document certifying the payment.

(3) The State fee shall not be refunded, except in cases provided for in Sections 21(3), 30(4) and (5) of this Act.

Payment of annual State fees

42.—(1) Annual State fee shall be paid within six months before the due date. The due date is the last day of the calendar month when the corresponding year of validity begins.

(2) The annual State fees for the first, the second and the third year of validity shall be paid together within six months before the due date of the annual State fee for the third year of validity.

(3) The annual State fee may be paid within six months after the expiry of the due date, paying a supplementary State fee.

(4) The Patent Office may give the applicant or the patentee, if he is also the author, an extension of time for paying the annual State fees for the first to the fifth year of validity. The request for the extension should be submitted to the Patent Office before the corresponding due date. The decision of the Patent Office on the extension for paying the annual State fee is final.

(5) If the Patent Office refuses to satisfy the request for the extension and the due date has expired, the annual State fee can be paid, without paying a supplementary State fee, within two months from the date of the decision of the Patent Office.

(6) The State fee for the first year of validity of supplementary protection shall be paid within six months before the due date. The due date is the last day of the calendar month when the term of the basic patent expires.

(7) The State fee for each of the following years of validity shall be paid within six months before the due date of the annual State fee of the supplementary protection. The due date is the last day of the calendar month when the year of validity of the supplementary protection ends.

(8) The annual State fee for supplementary protection may be paid within six months after the expiry of the due date, paying a supplementary State fee.

[16.06.1998; 27.10.1999]

Chapter X Transfer of Patent Rights

Transfer of right to apply for patent

43.—(1) Any person being, pursuant to Section 12 of this Act, entitled to apply for a patent, may transfer such right to another person.

(2) The right to apply for a patent shall be transferred to the legal successor.

[27.10.1999]

Transfer of patent application

44.—(1) An applicant for patent may transfer a patent application pending in the Patent Office to another person.

(2) In the event of the death of the applicant or the dissolution of the applicant if the applicant is a legal person, the patent application pending in the Patent Office shall transfer to the successor or legal successor.

(3) In order to amend the data on the applicant in the patent application, the applicant or the person to whom the application transfers shall submit to the Patent Office a corresponding request and the document certifying the payment of the State fee. If the request is submitted by a person to whom the patent application transfers, the request shall be accompanied by the document certifying the transfer or a notarised copy thereof.

(4) The Patent Office shall change the data on the applicant in the patent application.

(5) A patent application shall be deemed to be transferred to another person from the date on which the data is amended.

[27.10.1999]

Transfer of patent

45.—(1) A patentee may transfer the patent to another person.

(2) In the event of the death of the patentee or the dissolution of the patentee if the patentee is a legal person, the patent shall transfer to the successor or legal successor.

(3) In order to amend the data on the patentee in the registration, the patentee or the person to whom the patent transfers shall submit to the Patent Office a corresponding request and the document certifying the payment of the State fee. If the request is submitted by a person to whom the patent transfers, the request shall be accompanied by the document certifying the transfer or a notarised copy thereof.

(4) The request referred to in subsection (3) of this Section shall be submitted within one year from the date of the transfer of the patent as specified in the transaction or from the date of legal succession. If the patent is transferred pursuant to a court order, the request shall be submitted within one month from the date on which the court order enters into force.

(5) The Patent Office shall make an entry in the Register on amendment of the registration data specified in clause 6 of Section 35(2) of this Act.

(6) The entry on amendment of the registration data shall enter into force on the publication date of a notice of amended data in the Official Gazette of the Patent Office.

(7) The patent shall be deemed to be transferred to another person from the date of the transaction or of the transfer prescribed by the court order or from the date of legal succession.

(8) The person to whom the patent has transferred pursuant to the provisions of this Section may exercise the rights of patentee from the date on which the entry on amendment of registration data becomes valid.

[27.10.1999]

Licence

46.—(1) Patentee (licensor) may transfer, in whole or in part, the rights of the patentee specified in Section 15(1) of this Act to one or several persons (licensee) by a licence agreement in writing (hereinafter “licence”).

(2) With the consent of a licensor, a licensee may transfer the rights conferred by the licence to a third person by way of a sub-licence.

(3) The term of the licence shall not be longer than the term of patent protection; upon supplementary protection of medicinal products and plant protection products it shall not be longer than the term of supplementary protection.

(4) Licences may be registered in the Register. An unregistered licence has no legal force with respect to third persons.

(5) If a patent transfers to another person in cases specified in Section 45 of this Act, the rights and obligations conferred by the licence shall also transfer to the said person.

[27.10.1999]

Compulsory licence

47.—(1) Each person interested in using a patented invention and able to use it in the Republic of Estonia may, upon refusal from the patentee to grant a licence, bring action for obtaining a compulsory licence, if:

1. the patentee has not used the invention in the Republic of Estonia within three years from the publication date of a notice of the grant of the patent or within four years from filing the patent application, whereby the term with a later expiration date is taken into account;

2. the extent of the use of the invention by the patentee does not comply with the needs of Estonian domestic market;

3. the patent hinders the use of another invention which is technologically progressive and essential for Estonian economy;

4. the use of the invention is required by State defence, environment protection, public health or other important State interests of the Republic of Estonia, including an urgent necessity to use the invention in connection with natural catastrophes or other emergencies;

5. the patent prevents the grant of protection to a plant variety under the Plant Variety Rights Act (RT I, 1998, 36/37, 553) or the use of a plant variety that has been granted legal protection.

(1¹) A compulsory licence shall not be granted if the patentee imports, from any member State of the World Trade Organization, a product protected by a patent in the extent meeting the needs of Estonian domestic market.

(2) In cases specified in clause 3 of subsection (1) of this Section, the patentee shall be entitled to obtain a compulsory licence for another invention if no agreement is reached about exchanging licences (reciprocal licence).

(3) Upon granting a compulsory licence, the court shall prescribe the terms of the compulsory licence, including the extent and duration of the use of invention as well as the amount and payment procedure of the licence fee. The extent and duration of the use of the invention are determined on the basis of the needs of Estonian domestic market.

(4) The right to use the invention under a compulsory licence may transfer to another person solely with the enterprise using the compulsory licence or planning to use it pursuant to the terms of the compulsory licence.

(5) The grant of a compulsory licence shall not prevent the patentee from using the invention or from granting licences to other persons.

(6) A compulsory licence shall become effective from the date of entering it in the Register. The entry in the Register shall be made on the date of receipt at the Patent Office of a document certifying the payment of the State fee.

(7) Upon a change in the circumstances, both the licensor and the licensee may file an action in court for changing the terms of the compulsory licence.

[16.06.1998; 27.10.1999]

Chapter XI **Contestation and Protection of Patent Rights**

Contestation of authorship

48.—(1) Disputes concerning authorship shall be resolved in court after the publication of the patent application pursuant to Section 24 of this Act.

(2) Any natural person who, pursuant to Section 13(1) or (2) of this Act, considers himself to be the author of the invention, may file an action in court against the applicant for patent or the patentee. Authorship may also be contested by the successor of such natural person.

[27.10.1999]

Contestation of patentee and patent

49.—(1) Any person who proves that the right to the patent belongs to him may, within one year from the publishing date of a notice of the grant of the patent or in the event of the transfer of patent rights from the date it becomes evident, file an action in court against the patentee for deprivation of the patent.

(2) Where an action filed pursuant to subsection (1) of this Section is granted, the respondent, who has used the invention or made notable arrangements for using it, may apply for the use of the invention for a payment or free of charge after the deprivation of the patent, provided that the nature of the use is retained.

(3) Any person who considers that the invention protected by a patent is not in compliance with the provisions of Section 8 of this Act and the patent hinders his business transactions, may file an action in court against the patentee for the invalidation of the patent.

(4) The action referred to in subsection (3) of this Section may be filed during the term of the patent.

[27.10.1999]

Contestation of patent pursuant to administrative procedure

50.—(1) Any person who considers the grant of the patent by the Patent Office to be in conflict with this Act and to infringe his rights may, within nine months from the publication

date of a notice of the grant of the patent, file an appeal with the Board of Appeal against the decision of the Patent Office or contest the grant of the patent in an administrative court.

(2) The appeal may be based on the following statements:

1. the provisions of Sections 6, 7 or 8 of this Act have been infringed when granting the patent;

2. the description does not disclose the subject matter of the invention completely and clearly enough to be carried out by a person skilled in the art;

3. the invention protected by a patent, including the invention divided from the initial patent application pursuant to Section 9(2) of this Act, does not correspond to the subject matter of the invention disclosed in the initial patent application.

(3) The Board of Appeal shall examine the appeal and make a decision on the invalidation of the patent in whole or in part, or on amending the patent, or it shall dismiss the appeal.

(4) If the appellant or the patentee disagrees with the decision of the Board of Appeal, he may contest it in an administrative court within three months from the date of the decision of the Board of Appeal.

(5) The Patent Office shall make an entry in the Register pursuant to the decision of the Board of Appeal or the court, and publish in its Official Gazette a notice of the invalidation or amending of the patent.

[27.10.1999]

Protection of rights of author

51.—(1) The author of an invention may, without expiration, file an action in court if the rights provided for in Section 13(7) of this Act are infringed, and for settling non-proprietary disputes arising from authorship.

(2) For settling proprietary disputes arising from the use of the invention, the author may file an action in court within three years from the day when he became or should have become aware of the infringement of his rights.

Protection of rights of applicant

52.—(1) The applicant may, pursuant to Section 30 of this Act, file with the Board of Appeal an appeal against the decision of the Patent Office or he may file an action in an administrative court within two months from the date of the decision.

(2) If the applicant disagrees with the decision of the Board of Appeal, he may appeal against it, filing an action in court within three months from the day of making the decision.

(3) During provisional protection the applicant may also file an action in court in the event of infringement of exclusive right that commenced during provisional protection and demand termination of the infringement.

[27.10.1999]

Protection of rights of patentee

53.—(1) The patentee may file an action in court:

1. for disposal of the infringement of exclusive right, for preventing its repetition and for restoring the status quo before the infringement commenced;
2. for compensation for damages caused by the infringement of exclusive right;
3. for cancellation of compulsory licence or for changing its terms;
4. for resolving disputes arising from the licence agreement;
5. for appealing against the decisions of the Patent Office and the Board of Appeal.

(2) Any person having, through his culpable conduct, infringed the patentee's exclusive right, shall bear administrative or criminal liability in the cases provided by law.

(3) Any person having, through his culpable conduct, infringed the patentee's exclusive right and caused him property damage, shall be obliged to compensate for the damage. In the event of the use of the invention in good faith the court may adjudicate a compensation for damage caused during no more than five years prior to the action.

(4) The patentee shall be entitled to file an action in court within three years from the time when he became aware of the person who had infringed the exclusive right.

(5) If the infringement of the exclusive right was commenced during provisional protection, the action must be filed in court within the term prescribed in subsection (4) of this Section, or within one year from the publication date of the notice of the grant of the patent, whereby the term with the later expiration date is taken into consideration.

[27.10.1999]

Protection of rights of other persons

54.—(1) Any person who, before the filing of the patent application, used the invention in good faith, may file an action in court against the patentee for certification of the right of prior use.

(2) Any person interested in using the patented invention may, in cases prescribed by Section 47(1) of this Act, file an action in court against the patentee for obtaining compulsory licence.

(3) Any person using the invention under licence agreement (licensee) may file an action in court for resolving a dispute arising from the licence agreement.

(4) The licensee may also file an action in court upon the infringement of the patentee's exclusive right by other persons, provided that the licence agreement does not regulate otherwise. The licensee shall be obliged to previously notify the patentee of his wish to file an action. The obligation of notification shall be deemed to be fulfilled if the notification has been sent to the patentee in a registered letter at an address entered in the licence agreement or in the Patent Register.

(5) Any person may, upon doubt that his activities might infringe the patentee's exclusive right, file an action in court against the patentee for certifying that the existence of the patent does not prevent his economic or commercial activities.

Procedure for resolution of patent disputes

55.—(1) In cases prescribed by the law, patent disputes shall be resolved at the Board of Appeal and in court.

(2) Actions referred to in this Act fall within the jurisdiction of the court in the jurisdiction of which the Patent Office is located.

(3) The court shall resolve patent disputes pursuant to procedure prescribed by the Code of the Civil Procedure (RT I 1998, 43-45, 666), taking into account the specifications prescribed by this Act.

(4) The court may refuse to proceed with the appeal if it includes solely an appeal to be resolved, as prescribed by this Act, by the Board of Appeal, and if the appeal has not been preliminarily examined by the Board of Appeal.

(5) The Board of Appeal shall examine appeals filed with it on the grounds of this Act pursuant to procedure prescribed by the Statutes of the Board of Appeal.

Burden of proof

55¹.—(1) If an action has been filed in court under Section 15(2) of this Act, the defendant shall be obliged to prove that for making a similar product he has used a process different from the patented process.

(2) If the use of a different process is not proved, the product shall be deemed to have been made according to the patented process, provided that in spite of reasonable efforts the patentee has not succeeded in specifying the process actually used for making this product and the use of the patented process is probable, or if the product made according to the patented process is new.

(3) Evidence submitted by the defendant and containing his manufacturing or business secrets may be disclosed solely with the consent of the defendant.

[16.06.1998]

Court proceedings upon filing action

56.—(1) In the event of an action referred to in Section 54(4) of this Act, the action should be accompanied by a copy of the notice sent to the patentee. If the copy is missing, the court shall reject the action and prescribe a term for the plaintiff to fulfil the obligation of notification.

(2) For the duration of discussing an action for termination of the infringement of exclusive right, the court may, on request from the plaintiff, order, for preventing continuous infringement, the product or object protected by a patent and made without the consent of the patentee, the use of which infringes the patentee's exclusive right, to be removed from circulation. Upon necessity the court may demand the plaintiff to give security for the damage of the defendant in case of nonsuit.

(3) In cases referred to in subsection (2) of this Section, the court may direct, on request from the plaintiff, that the proprietor of the product or object may, during the remaining term of the patent or during part of it, continue using it for a fair compensation to the patentee.

Attendance of Patent Office

57.—(1) Upon resolution in court of patent disputes, the Patent Office may become a third party to the proceeding.

(2) A transcript of a court order passed with regard to patent disputes shall be sent by the court to the Patent Office for information also in cases where the Patent Office has not been party to the proceeding.

Representative in court upon resolution of patent disputes

58.—(1) Upon resolving in court of patent disputes, patent attorneys shall be allowed to act in court as representatives.

(2) The authority of the patent attorney shall be certified by the certificate of the patent attorney and by the authorisation issued by the client.

(3) If the residence or seat of the plaintiff is in a foreign State, he shall be obliged to authorise as his representative a natural person residing in the Republic of Estonia for receiving notices, invitations and documents from the court.

Chapter XII
Patenting Inventions in Foreign States

Procedure for patenting invention

59.—(1) Any person whose residence or seat is in the Republic of Estonia shall be entitled to patent his invention in foreign States independently of patenting it in the Republic of Estonia.

(2) Any person whose residence or seat is in the Republic of Estonia shall patent his invention in foreign States independently pursuant to the laws of the foreign States and to international conventions.

Filing of international patent application

60. An international patent application shall be filed pursuant to Section 32(3) and (4) of this Act.

Chapter XIII
Implementation of the Act

Entry into force of the Act

61.—(1) The Patent Act shall enter into force on May 23, 1994.

(2) The provisions of clause 1 of Section 11(2) of this Act shall apply after the restoration of the membership of the Republic of Estonia in the Paris Convention for the Protection of Industrial Property.

(3) The provisions of Section 23(2) and Chapter VI of this Act shall apply after the expiry of three months from the acceding of the Republic of Estonia to the Patent Cooperation Treaty, done at Washington on June 19, 1970.

(4) Microorganism strains shall be protected with patents after the acceding of the Republic of Estonia to the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, concluded in 1977 (RT II 1996, 14/15, 49).

(5) Upon filing a patent application within six months from the entry into force of this Act, each priority shall be recognised on the basis of the first patent application or utility model registration application that is not earlier than August 20, 1990 and is filed in a State member of the Paris Convention for the Protection of Industrial Property.

(6) Until June 30, 2000, supplementary protection can be applied for medicinal products or plant protection products which are registered and contain an active substance that has been granted a basic patent before January 1, 2000.

[27.10.1999]

Invalidation of legal acts

62. Sections 521 to 523 of Part V and Sections 524 to 530 of Part VI of the Civil Code of the Estonian SSR shall be repealed.

* *Estonian title:* Patendiseadus.
The Patent Act was passed on March 16, 1994 (*Riigi Teataja* [RT] (State Gazette), I 1994, 25, 406) and entered into force May 23, 1994.

It was amended by the following Acts (date the Act was passed, publication in the *Riigi Teataja*, date of entry into force):

26.06.1996 (RT I 1996, 49, 953) 26.07.1996
16.06.1998 (RT I 1998, 64/65, 1003) 25.07.1998
25.11.1998 (RT I 1998, 107, 1768) 21.12.1998
27.10.1999 (RT I 1999, 84, 764) 01.01.2000.

Each amended Section ends with a reference [in square brackets] to the dates on which the Acts enforcing the current wording were passed.

Entry into force (of last amending Act): January 1, 2000.

Source: English translation communicated by the Estonian authorities.

** Added by the International Bureau of WIPO.