

Utility Models Act
(Passed 16 March 1994
(RT I 1994, 25, 407; Consolidated text RT I 2000, 60, 388),
entered into force 23 May 1994)

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Chapter I General Provisions

Purpose of Act

§ 1. This Act provides for the legal protection of inventions as utility models.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

§ 2. (Repealed—09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Equality of Rights and Obligations of Persons of the Republic of Estonia and of Foreign States

§ 3. The rights and obligations prescribed by legislation concerning the legal protection of inventions as utility models apply, taking account of the restrictions provided for in this Act, equally to persons of the Republic of Estonia and of foreign states (hereinafter persons).

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

§ 4. (Repealed—09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Chapter II Legal Protection and Patentability of Utility Models

Legal Protection of Utility Models

§ 5.—(1) Utility models are inventions which are new, which involve an inventive step and which are susceptible of industrial application.

(2) The following shall not be regarded as inventions:

1. industrial designs;
2. layout-designs of integrated circuits;
3. discoveries, scientific theories and mathematical methods;
4. schemes, rules and methods for performing mental acts or doing business;
5. design documentation for and plans of constructions, buildings or areas;
6. symbols;
7. algorithms for computers and computer programs;
8. presentations of information;
9. human bodies or parts thereof;
10. plant or animal varieties.

(3) An invention is granted legal protection upon registration in the state register of utility models (hereinafter register).

(4) The scope of legal protection of a utility model is determined by the terms of the claims of the utility model.

(5) Equipment, processes and materials can be protected as utility models.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Inventions not Protected as Utility Models

§ 6.—(1) The following shall not be protected as utility models:

1. inventions which are contrary to public order and morality;
2. methods of treatment and diagnostic methods practised on the human or animal body;
3. biotechnological inventions.

(2) For the purposes of this Act, “biotechnological inventions” specified in clause (1) 3) of this section mean:

1. inventions concerning biological materials or products which contain such materials;
2. inventions concerning the derivation or use of biological materials.

(3) For the purposes of this Act, “biological material” specified in subsection (2) of this section means any material, including micro-organisms, which contains genetic information and is capable of reproducing itself or being reproduced in a biological system.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Novelty, Inventive Step and Industrial Application

§ 7.—(1) An invention shall be considered to be new if it does not form part of the state of the art. The state of the art shall be held to comprise everything made available to the public by means of written or oral description, by use, or in any other way, before the filing date of the registration application of a utility model (hereinafter registration application) or

before the date of priority if priority is claimed. In determining novelty, the content of registration applications published pursuant to § 33 of this Act and of patent applications published pursuant to § 24 of the Patents Act (RT I 1994, 25, 406; 1998, 74, 1227; 107, 1768; 1999, 84, 764) prior to the filing date of the registration application or the date of priority, if priority is claimed, shall also be taken into consideration if the filing dates or, if priority is claimed, the dates of priority of such applications are earlier.

(2) In determining the state of the art, no such information is taken into consideration which is disclosed within twelve months before the filing date of a registration application or, if priority is claimed, before the date of priority, by a person who is entitled to the registration of a utility model pursuant to § 11 of this Act, or by any other person who has received the information from such person against or according to the will of the person.

(3) For the purposes of this Act, an invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious.

(4) A utility model shall be considered as susceptible to industrial application if it can be manufactured or used in economy.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Unity of Utility Model

§ 8. A registration application may contain only one invention.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Claims of Utility Model

§ 9.—(1) The claims of a utility model shall define the subject matter of the invention in words in a clear, concise and short manner.

(2) In claims, the subject matter of an invention shall be presented as a set of essential technical features.

(3) The claims of a utility model consist of one or several claims.

(4) The description and drawings of the invention shall be used to interpret the claims of the utility model.

(5) The description and drawings of an invention shall disclose the subject matter of the invention in a manner sufficiently clear and concise for it to be carried out by a person skilled in the art.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Priority

§ 10.—(1) Priority is the preferential right of the person who files the first registration application or patent application to apply for legal protection of an invention as a utility model. The filing date of the first registration application or patent application shall be considered the date of priority.

(2) If a registration application is filed with the Patent Office within twelve months after the filing date of the first registration application or patent application, priority may be established:

1. on the basis of the filing date of the first registration application or patent application in any State party to the Paris Convention of the Protection of Industrial Property (RT II 1994, 4/5, 19) or member of the World Trade Organisation;

2. on the basis of the filing date of the first registration application or patent application in a state which is not a State party to the Paris Convention for the Protection of Industrial Property or in a state which is not member of the World Trade Organisation if such state guarantees equivalent conditions for first registration applications and patent applications filed in the Republic of Estonia.

(3) Priority may be established for a registration application filed with the Patent Office within twelve months by the same person for the same invention on the basis of the filing date of an earlier registration application or patent application, provided that the earlier registration application or patent application has not been published and priority has not been claimed on the basis thereof for some other registration application or patent application. If an earlier registration application is being processed, the earlier registration application is deemed to be withdrawn.

(4) If priority is claimed, priority may be established for a registration application on the basis of the filing dates of several registration applications or patent applications filed earlier.

(5) Priority shall be claimed in a registration application. Documents certifying the priority claim shall be filed together with the registration application or within sixteen months as of the date of priority. Documents certifying the priority claim need not be submitted if priority is claimed on the basis of a first registration application or patent application in the Republic of Estonia.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Chapter III **Right to Apply for Registration of Utility Models**

Right to Utility Model

§ 11.—(1) The right to apply for the registration of a utility model and to become the owner of the utility model is vested in the author of the invention and a legal successor of the author.

(2) If an invention is created in the performance of contractual obligations, the right to apply for the registration of a utility model and to become the owner of the utility model is vested in a person pursuant to the contract.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Author of Utility Model

§ 12.—(1) The author of a utility model (hereinafter author) is a natural person who has created an invention as a result of his or her creative activities.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(2) If an invention is created as a result of the joint creative activities of several natural persons, such persons are joint authors.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(3) In the case of joint authorship, all rights arising from the authorship are exercised by the authors jointly, unless they have entered into a written agreement which prescribes otherwise.

(4) (Repealed—09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(5) (Repealed—09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(6) Authorship is inalienable and unspecified in term.

(7) An author has the right to a pseudonym and he or she may:

1. request the disclosure of his or her name as the author;
2. prohibit the disclosure of his or her name as the author;
3. revoke at any time the prohibition to disclose his or her name.

(8) An author has the right to receive fair proceeds from the profit received from the utility model.

(9) The proprietary rights of an author are transferable and inheritable.

Chapter IV **Exclusive Right of Owner of Utility Model**

Owner of Utility Model

§ 13.—(1) The owner of a utility model is the person who is entered in the register as the owner.

(2) Upon the registration of a utility model, the applicant for the registration of the utility model (hereinafter applicant) is entered in the register as the owner of the utility model.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Exclusive Right of Owner of Utility Model

§ 14.—(1) The owner of a utility model has exclusive right to use the utility model, that is:

1. to manufacture, use, sell, offer for sale or import for the aforementioned purposes a product which contains the substance or device protected as a utility model;
2. to use or offer for use the process protected as a utility model and to use, offer for sale, sell or import for the aforementioned purposes a product which is manufactured according to the process protected as a utility model.

(2) In the case of products manufactured according to a process which is protected as a utility model, the manufacture, use, distribution, sale, offering for sale or acquisition (including by importation) for the aforementioned purposes of a similar product without the authorisation of the owner is considered an infringement of the exclusive right of the owner of the utility model unless it is proved that the similar product is manufactured according to a different process.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

*Acts Which do not Constitute Infringement of
Exclusive Right of Owner of Utility Model*

§ 15. The following acts do not constitute infringement of the exclusive right of the owner of a utility model:

1. the use of the utility model on board of ships of other states (within the hull, machinery, rigging, radio-navigation equipment or other equipment) if such ships are temporarily or accidentally in the waters of the Republic of Estonia and the utility model is used solely for the purposes of the ship;

2. the use of the utility model within the construction or auxiliary equipment of aircraft or land vehicles of other states, or in the operation of the vehicles or equipment if such vehicles are temporarily or accidentally in the Republic of Estonia;

3. the use of the utility model in testing related to the utility model itself;

4. the private non-commercial use of the utility model if such use does not harm the interests of the owner of the utility model.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Exhaustion of Rights

§ 15¹. The owner of a utility model has no right to prohibit further use for commercial purposes of a product which contains a registered utility model when the product has been put on the market in the territory of the Republic of Estonia or a State party to the Agreement of the European Economic Area by the owner of the utility model or with the owner's consent.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Right of Prior Use

§ 16.—(1) A person who, prior to the filing of a registration application for an invention by another person, has, in good faith and independently of the person who files the registration application, used the same invention for industrial application in the Republic of Estonia, may continue to use the invention retaining the same general nature of application. Use is in good faith unless the user knew or should have known that the filing of a registration application for the invention was intended.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(2) The right of prior use also belongs to a person who has, in good faith, made serious preparations for the industrial application of an invention in the Republic in Estonia.

(3) The right of prior use can only be transferred to another person together with the enterprise with regard to which the right of prior use is established or in which it was intended to be used.

Provisional Protection

§ 16¹.—(1) An invention shall be granted provisional protection as of the filing date of a registration application until the date when the notice of entry of registration data is published in the official gazette of the Patent Office.

(2) A person who commences use of an invention during the period between the filing date of the registration application and the date when the notice of entry of registration data is published in the official gazette of the Patent Office is not deemed to infringe the exclusive

right of the owner of the utility model unless the person knew or should have known that a registration application is filed with regard to the invention or the applicant notified the person in writing of the filing of the registration application.

(3) Persons whom an applicant notifies of the filing of the registration application shall be deemed, after the date when the notice of entry of registration data is published in the official gazette of the Patent Office, to infringe the exclusive right of the owner of the utility model as of the date of receipt of the notice concerning the filing of registration application unless such persons have the right of prior use pursuant to § 16 of this Act.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Chapter V **Registration Application and Processing Thereof**

Registration Application

§ 17.—(1) A registration application shall include the following documents:

1. a request for the registration of a utility model which contains information concerning the applicant, the author and the name of the utility model;
2. the description of the invention;
3. the claims of the utility model;
4. the drawings referred to in the description of the invention or claims of the utility model;
5. an abstract of the subject matter of the invention;
6. a document certifying payment of the state fee;
7. an authorisation document if the applicant has a representative.

(2) Registration application documents shall be filed in Estonian.

(3) Registration application documents, except the request for the registration of a utility model, may also be filed in another language, if translation into Estonian is included.

(4) The requirements for the format of registration applications shall be established by the Minister of Economic Affairs.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Filing of Registration Application

§ 18.—(1) Registration applications shall be filed with the Patent Office.

(2) A document certifying payment of the state fee shall be filed within one month as of the date of receipt of the registration application.

(3) An authorisation document shall be filed within two months as of the date of receipt of the registration application.

(4) Translations of registration application documents shall be filed within three months as of the date of receipt of the registration application.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Representation of Applicant

§ 18¹.—(1) An applicant or an Estonian patent agent (hereinafter patent agent) authorised by the applicant shall perform procedures related to the registration or continued validity of the registration of a utility model.

(2) If the residence or seat of an applicant is outside the Republic of Estonia, the registration application shall be filed by the applicant or through an authorised patent agent. The applicant shall perform the procedures related to the registration or continued validity of the registration of a utility model which follow the filing of the registration application through an authorised patent agent.

(3) If several applicants file a registration application jointly, they shall authorise a patent agent or a representative from among themselves whose residence or seat is in the Republic of Estonia to perform the procedures related to the registration or continued validity of the registration of a utility model.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Registration Application Based on Patent Application

§ 19.—(1) A registration application may be filed on the basis of a patent application which concerns the same invention and is being processed by the Patent Office.

(2) A registration application cannot be filed later than within ten years as of the filing date of the patent application.

(3) The filing date and the date of priority of a patent application shall be considered as the filing date and the date of priority of the registration application, respectively.

Filing Date of Registration Application and Acceptance Thereof for Processing

§ 20.—(1) Upon receipt of a registration application, the Patent Office shall mark every document of the registration application with a notation of receipt. The notation of receipt shall contain:

1. the date of receipt of the registration application;
2. the sequence number of receipt of the registration application.

(2) If a registration application is filed by post, the date the registration application is received by the Patent Office is deemed to be the date of receipt of the registration application.

(3) The date of receipt of a registration application by the Patent Office is deemed to be the filing date of the registration application if at least the following documents are filed on the date of receipt:

1. a document requesting the registration of a utility model;
2. a document describing the invention;
3. a document containing the name and address of the applicant.

(4) After the filing date of a registration application is determined pursuant to the provisions of subsection (3) of this section, and the receipt of a document certifying payment of the state fee pursuant to the provisions of subsection 18 (2) of this Act, the Patent Office

shall accept the registration application for processing and notify the applicant thereof in writing.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Refusal to Accept Registration Application for Processing

§ 20¹.—(1) The Patent Office shall refuse to accept a registration application for processing by making a decision to refuse to accept the registration application for processing if documents filed do not comply with the requirements provided for in subsection 20 (3) of this Act.

(2) The Patent Office shall refuse to accept a registration application for processing by making a decision to reject the registration application, if:

1. the document certifying payment of the state fee is missing and is not filed within one month after the date of receipt of the registration application;
2. translation of the description of the invention is missing and is not filed within three months after the date of receipt of the registration application;
3. the authorisation document is missing and is not filed within two months after the date of receipt of the registration application.

(3) Upon the refusal to accept a registration application for processing, the applicant is notified thereof in writing and the state fee is refunded.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Processing of Registration Application

§ 21.—(1) The Patent Office shall verify:

1. the format of the documents of a registration application;
2. whether the invention is in compliance with the provisions of subsection 5 (2) and § 6 of this Act.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(2) If priority is claimed, the Patent Office shall verify the documents certifying the claim.

(3) The Patent Office shall determine the date of priority of a registration application.

(4) The Patent Office shall inform the applicant in writing of formal deficiencies of the registration application documents or of any other circumstances which hinder the processing thereof, and shall establish a due date for the elimination of deficiencies or provision of explanations.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(5) If a registration application is in compliance with the provisions of subsection (5) 2 and §§ 6 and 17 of this Act, the Patent Office shall make a decision to register the utility model and make an entry of the registration on the basis of the decision and shall notify the applicant for a certificate thereof in writing.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(6) If a registration application is not in compliance with the provisions of subsection 5 (2) or § 6 or § 17 of this Act or the applicant does not eliminate the formal deficiencies of the

registration application documents or does not provide explanations, the Patent Office shall refuse to register the utility model, shall make a decision to reject the registration application and shall notify the applicant thereof in writing.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Suspension of Processing of Registration Application

§ 22.—(1) If an applicant does not respond by the due date determined pursuant to subsection 21 (4) of this Act, the Patent Office shall suspend the processing of the registration application. The processing of a registration application shall be resumed if the applicant responds within two months as of the specified due date and pays the state fee.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(2) The processing of a registration application may be suspended and resumed only once.

(3) (Repealed—09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Correction and Amendment of Registration Application

§ 23.—(1) An applicant may correct and amend a registration application during processing such that no alterations are made to the subject matter of the invention which was disclosed in the registration application on the filing date of the registration application.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(2) Corrections and amendments are deemed to alter the subject matter of an invention if they contain essential features of the invention which were not included in the description of the invention, the claims of the utility model or the drawings on the filing date of the registration application.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(3) (Repealed—09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(4) During processing, the Patent Office may, without obtaining the approval of the applicant, only edit the documents of a registration application.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Withdrawal of Registration Application

§ 24.—(1) An applicant may file a request for the withdrawal of a registration application and may withdraw a registration application which is being processed. Registration application documents are not returned.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(2) If several persons apply for the registration of a utility model, a request for the withdrawal of the registration application shall be filed with the consent of all such persons.

(3) The Patent Office deems a registration application to be withdrawn:

1. if the applicant for a certificate has not responded to the demand of the Patent Office to provide explanations or to correct or amend the documents of the registration application within two months after the due date determined pursuant to subsection 21 (4) of this Act;

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

2. if the applicant has not paid the prescribed state fee and has not submitted the document certifying payment of the state fee during the term of two months provided for in subsection 22 (1) of this Act;

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

3. in the case specified in subsection 10 (3) of this Act.

Termination of Processing of Registration Application

§ 25.—(1) The Patent Office shall terminate the processing of a registration application which is withdrawn or deemed to be withdrawn.

(2) The applicant shall be notified of the termination of the processing of a registration application in writing.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Resumption of Processing of Registration Application

§ 26.—(1) An applicant may request resumption of the processing of a registration application if the Patent Office has terminated the processing of the registration application by having deemed the registration application to be withdrawn pursuant to clause 24 (3) 1) or 2) of this Act, provided that the failure to perform the acts specified in such provisions occurred due to *force majeure* or some other impediment independent of the applicant or the patent agent representing the applicant.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(2) The Patent Office shall resume the processing of a registration application if the applicant proves the existence of an impediment and performs the prescribed acts within two months after the impediment ceases to exist, pays a state fee and submits the document certifying payment of the state fee within the specified term.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(3) A request for resumption of the processing of a registration application may be filed within one year after the term for the act which was not performed.

(4) The provisions of subsections (1), (2) and (3) of this section do not extend to the provisions of subsection 34 (4) of this Act.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Appeal against Decisions of Patent Office During Processing of Registration Application

§ 27.—(1) The decisions of the Patent Office may be appealed against pursuant to the procedure provided for in §§ 41-54 of the Industrial Design Protection Act (RT I 1997, 87, 1466; 1998, 108/109, 1783) to the Industrial Property Board of Appeal (hereinafter Board of Appeal), formed pursuant to the Republic of Estonia Trade Marks Act (RT 1992, 35, 459; RT I 1998, 15, 231; 1999, 93, 834; 102, 907), or in a court.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(2) An applicant may file an appeal with the Board of Appeal within two months as of the date on which the decision is made and shall pay a state fee.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(3) The Board of Appeal has the right to:

1. dismiss an appeal and not to amend the decision of the Patent Office;
2. amend or annul a decision of the Patent Office and make a new decision;
3. annul a decision of the Patent Office and require the Patent Office to resume processing.

(4) The state fee is refunded upon grant of appeal.

(5) If an appeal is partially granted, the Board of Appeal shall determine the amount of state fee refunded.

Completion of Processing of Registration Application

§ 28. The processing of a registration application is completed by the registration of a utility model in the register or by the rejection of the registration application.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Chapter VI International Registration Application of Utility Model

Definition of International Registration Application of Utility Model

§ 29.—(1) International registration application of a utility model (hereinafter international registration application) is a registration application filed on the basis of the Patent Cooperation Treaty (RT II 1994, 6/7, 21) entered into on 19 June 1970 in Washington (hereinafter Patent Cooperation Treaty).

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(2) (Repealed—09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(3) (Repealed—09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(4) (Repealed—09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(5) The Patent Office is the designated or elected office for such international registration applications in which the Republic of Estonia is indicated as the designated or elected state.

(6) International registration applications in which the Republic of Estonia is indicated as the designated state are deemed equal to registration applications filed pursuant to §§ 17 and 18 of this Act.

(7) An international registration application in which the Republic of Estonia is indicated as the designated state is deemed to be filed with the Patent Office on the international filing date which is determined by the receiving office (hereinafter receiving office), as specified in the Patent Cooperation Treaty.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(8) (Repealed—09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Specifications of Processing of International Registration Applications

§ 30.—(1) For an international registration application to be accepted for processing, an applicant shall file with the Patent Office a written application for the international registration application to be accepted for processing, add an Estonian translation of the

international registration application (hereinafter translation) thereto and pay a state fee within twenty months as of the date of priority.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(2) If an applicant has chosen the Republic of Estonia within nineteen months as of the date of priority, the applicant shall file the written application for the international registration application to be accepted for processing together with the translation and pay a state fee within thirty months as of the date of priority.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(3) An applicant shall be granted an additional period of two months for filing the translation provided that the applicant pays an additional state fee upon filing the translation.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(4) An applicant may correct and amend the claims of a utility model, the description and drawings of the invention within three months as of the filing date of an application for the international registration application to be accepted for processing, provided that no alterations are made to the subject matter of the invention which was disclosed in the international registration application on the filing date thereof.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(5) If an applicant is required to be represented by a patent agent or a representative pursuant to subsection 18¹ (2) or (3) of this Act, the patent agent or representative shall be authorised not later than within two months as of the filing date of the application for the international registration application to be accepted for processing.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(6) An international registration application shall lose its effect specified in subsections 29 (6) and (7) of this Act if:

1. the provisions of Article 24 (1) (i) and (ii) of the Patent Cooperation Treaty apply;
2. the applicant fails to comply with the requirements provided for in subsections (1), (2) or (3) of this section;

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

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

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

4. the applicant fails to comply with the requirement established in subsection (5) of this section.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(7) (Repealed—09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(8) (Repealed—09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(9) (Repealed—09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(10) If the receiving office refuses to accept an international filing date or reports that an international registration 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 reports that the designation of the Republic of Estonia is deemed to be withdrawn, the applicant may, within two months after receipt of the corresponding report or decision, request the review of the international registration application in the Republic of Estonia and request that the International Bureau send a copy of the international registration application to the Patent Office. The applicant shall file a translation of the international registration application with the Patent Office and, in the cases prescribed, information concerning the patent agent, and pay a state fee during the term determined by the Patent Office. The Patent Office shall verify the correctness of the decision of the receiving office or the International Bureau and notify the applicant of the results. If the decision of the receiving office or the International Bureau is incorrect, the registration application shall be reviewed as an international registration application.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(11) If the processing of an international registration application is terminated on the grounds that an applicant has failed to perform an act prescribed by the receiving office, the International Searching Authority, the International Preliminary Examining Authority or the International Bureau or an act provided for in subsections (1) and (2) of this section on time due to *force majeure* or some other impediment independent of the applicant, the Patent Office shall restore the processing of the international registration application in the Republic of Estonia, provided that the applicant adheres to the provisions of subsections 26 (2) and (3) of this Act.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Chapter VII **State Register of Utility Models**

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Establishment of Register

§ 31. The register is established and the statutes for maintenance of the register are approved by the Government of the Republic.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Maintenance of Register

§ 32.—(1) The Patent Office is the chief and authorised processor of the register.

(2) The register comprises the entry book and the registry file.

(3) Registry entries are entries of registration application data, entries to amend registration application data entries, entries concerning the processing of registration applications, entries of registration data, entries to amend registration data entries, entries concerning renewal of registration and deletion of registration entries.

(4) A registry entry is made on the basis of a decision made by the Patent Office, the Board of Appeal or a court judgment.

(5) A registry entry becomes valid on the date on which it is made.

(6) At the request of an applicant, the registration of a utility model in the register shall be postponed but for not longer than eighteen months as of the date of the registration application. The request shall be filed together with the registration application.

(7) Notices concerning entries of registration data, entries to amend registration data entries and of deletion of registration entries shall be published in the official gazette of the Patent Office.

(8) After the entry of registration data in the register, the Patent Office prepares a specification of the utility model.

(9) The requirements for the format and the procedure for completion of the specification of a utility model shall be established by the Minister of Economic Affairs.

(10) The specification of a utility model shall be kept in the registry file.

(11) After the notice of the entry of registration data is published, the Patent Office shall issue the owner of the utility model a utility certificate which contains the specification of the utility model.

(12) Only one utility certificate is issued regardless of the number of owners of the utility model.

(13) The requirements for the format and the procedure for completion and issue of utility certificates shall be established by the Minister of Economic Affairs.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Access to and Release of Data from Register

§ 33.—(1) The register is public. Everyone has the right to examine the registry files and entry book and to obtain copies thereof.

(2) No information is released from the register concerning an author if the author has prohibited disclosure of the author's name.

(3) A registration application is deemed to be published as of the publication of the notice of entry of registration data.

(4) Prior to the publication of the notice concerning entry of registration data, the following data may be released from the register:

1. the name of the invention;
2. the index of the international patent classification adopted under the Strasbourg Agreement concerning the International Patent Classification (RT II 1996, 4, 15);
3. the number and filing date of the registration application;
4. priority data;
5. information concerning the applicant and the representative of the applicant.

(5) Prior to the publication of the notice concerning entry of registration data, access to a registration application processing file is granted to the applicant, persons who have the written consent of the applicant, persons whom the applicant has informed in writing of the filing of the registration application and warned of the applicant's right to apply for the registration of a utility model and to become the owner of the utility model.

(6) The description of the invention and claims of the utility model of a registration application which is rejected, withdrawn or deemed to be withdrawn shall not be published.

(7) A state fee shall be paid for the release of written information except for the release of information to a state agency with supervisory rights or a court.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Chapter VIII **Validity of Legal Protection of Utility Models**

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Period of Validity of Registration

§ 34.—(1) A registration shall be valid for four years as of the filing date of the registration application.

(2) The period of validity of a registration may be extended on the basis of an application of the owner of a utility model initially for four years and thereafter for another two years.

(3) A registration becomes prematurely invalid if the owner of the utility model files an application for the termination of the validity of the registration.

(4) A state fee is paid for the extension of validity of a registration:

1. within six months before the date of expiry of the validity of the registration, or,
2. upon payment of additional state fee, within six months as of the date of expiry of the validity of the registration.

(5) A state fee is deemed to be paid if the Patent Office receives a document certifying payment of the state fee.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

§ 35. (Repealed—09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Amendment of Registration of Utility Model

§ 36.—(1) The owner of a utility model may amend the registration of the utility model during the period of validity of the registration provided that the amendments shall not alter the subject matter of the invention or extend the scope of legal protection.

A request for making amendments to the registration of a utility model and a document certifying payment of the state fee shall be filed with the Patent Office.

(3) The owner of a utility model may file a request with the Patent Office for the making of amendments to correct obvious spelling mistakes and calculation errors which restrict the scope of legal protection of the utility model within one year after the publication of the notice concerning entry of registration data.

(4) The extension of the scope of legal protection of a utility model caused by amendments made on the basis of subsection (3) of this section shall not restrict the rights of persons who had, prior to the publication of the notice concerning the making of amendments to the registration of the utility model, taken into consideration the initial scope of legal protection of the utility model in their economic and commercial activities.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Chapter IX

(Repealed—09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Chapter X

Transfer of Rights to Utility Model

Transfer of Right to Apply for Registration of Utility Model

§ 40.—(1) A person who has the right to apply for the registration of a utility model pursuant to section 11 of this Act may transfer such right to another person.

(2) The right to apply for the registration of a utility model shall transfer to a successor or a legal successor.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Transfer of Registration Application

§ 41.—(1) An applicant may transfer a registration application which is being processed by the Patent Office to another person.

(2) In the event of the death of an applicant or dissolution of an applicant who is a legal person, a registration application which is being processed by the Patent Office shall transfer to a successor or a legal successor.

(3) In order to amend the applicant's data in the entry of registration data, the applicant or the person to whom the registration application is transferred shall file a corresponding application and a document certifying payment of the state fee with the Patent Office. If the application is filed by the person to whom the registration application is transferred, the person shall annex the document certifying the transfer or a certified copy thereof to the application.

(4) A registration application is deemed to be transferred to another person as of the date on which the entry to amend the registration application data entry is made.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Transfer of Utility Model

§ 42.—(1) The owner of a utility model may transfer the utility model to another person.

(2) In the event of the death of the owner of a utility model or dissolution of an owner who is a legal person, the utility model shall transfer to a successor or a legal successor.

(3) In order to amend the data concerning the owner of a utility model in the entry of registration data, the owner of the utility model or the person to whom the utility model is transferred shall file a corresponding application and a document certifying payment of the state fee with the Patent Office. If the application is filed by the person to whom the utility model is transferred, the person shall add to the application the document certifying the transfer or a certified copy thereof.

(4) The application specified in subsection (3) of this section shall be filed within one year after the date of transfer of the utility model determined by the transaction or after the date of creation of legal succession. If the utility model is transferred pursuant to a court judgment, the application shall be filed within one month after the date on which the court judgment enters into force. Upon disregard of the terms specified in this subsection, the registration is deemed to be invalid.

(5) A utility model is deemed to be transferred to another person as of the date of transfer of the utility model determined by the transaction or court judgment or the date of creation of legal succession.

(6) A person to whom a utility model is transferred pursuant to the provisions of this section may commence use of the rights of the owner of the utility model as of the date on which the entry to amend the registration data becomes valid.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Licence

§ 43.—(1) The owner of a utility model (licensor) may, pursuant to a written licence agreement (hereinafter by way of a licence), grant the use of the rights of the owner of the utility model listed in subsection 14 (1) of this Act to another person or persons (licensee) in part or in full.

(2) With the consent of a licensor, a licensee may, by way of a sublicense, transfer the rights deriving from a licence to a third person.

(3) The term of a licence shall not be longer than the term of the registration.

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

(5) Upon transfer of a utility model to another person in the cases provided for in § 42 of this Act, the rights and obligations deriving from the licence are also transferred to the said person.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

§ 44. (Repealed—09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Chapter XI Contestation and Protection of Rights to Utility Model

Contestation of Authorship

§ 45.—(1) Disputes concerning authorship are resolved in court after the registration of a utility model.

(2) Any person who finds that he or she is, pursuant to subsection 12 (1) or (2) of this Act, the author or joint author of a utility model, may file an action in court against the owner of the utility model for certification of his or her authorship.

(3) Authorship may be contested by the author or a successor of the author.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Contestation of Owner of Utility Model

§ 46.—(1) Any person who finds that the right to a utility model belongs to the person may, within one year as of the publication date of the notice concerning entry of registration data or, upon transfer of a utility model, as of the publication date of the notice of entry to amend registration data, file an action in court against the owner of the utility model for the utility model to be transferred.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(2) Upon satisfaction of an action filed pursuant to subsection (1) of this section, the defendant who has used the invention or has made serious preparations to use the invention may, after the transfer of the utility model, apply for the use of the invention for a charge or free of charge, provided that the invention shall be used for the same purposes.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(3) A person who considers that a registered utility model does not comply with the provisions of subsection 5 (1) or the description of invention of such utility model does not comply with the provisions of subsection 9 (5) or the invention does not correspond to the subject matter of the invention as disclosed in the initial registration application and the registration hinders the economic or commercial activities of such person, may file an action in court against the owner of the utility model for the registration to be declared unlawful.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(4) An action specified in subsection (3) of this section may be filed during the period of validity of the registration.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(5) If a registration is declared invalid, the Patent Office shall delete the registration entry if the owner of the utility model or a person specified in subsection (3) of this section files an application accompanied by a copy of the court judgment which has entered into force with the Patent Office.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Contestation of Registration

§ 47.—(1) Any interested person who considers that the registration of an invention by the Patent Office is contrary to the requirements for the format specified in subsection 17 (4) of this Act or the provisions of subsection 5 (2) or § 19 may file an action in an administrative court pursuant to the procedure provided for in the Code of Administrative Court procedure (RT I 1999, 31, 425; 96, 846) to declare the registration of the utility model unlawful and require that the Patent Office resume the processing of the registration application and make a new decision.

(2) An action specified in subsection (1) of this section may be filed within three months as of the publication date of the notice concerning entry of registration data.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Protection of Rights of Author

§ 48.—(1) The author of a utility model may file, without a limitation period, an action in court upon infringement of the rights provided for in subsection 12 (7) of this Act and for the resolution of other non-proprietary disputes deriving from authorship.

(2) The author of a utility model may file an action in court for the resolution of a proprietary dispute relating to the use of a utility model within three years as of the date on which the author becomes or should have become aware of the infringement of the author's right.

Protection of Rights of Applicants

§ 49.—(1) Pursuant to § 27 of this Act, an applicant may file an appeal with the Board of Appeal against a decision of the Patent Office or may, within two months as of the date of the decision, file an action with an administrative court.

(2) Upon disagreement with a decision of the Board of Appeal, an applicant may contest the decision by filing an action with an administrative court within three months as of the date of the decision.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Protection of Rights of Owner of Utility Model

§ 50.—(1) The owner of a utility model has right of recourse to a court:

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

1. for termination of an infringement of the exclusive right, prevention of the recurrence of an infringement of the exclusive right and restoration of the status quo prior to the infringement of the exclusive right;

2. for compensation for damage caused by a violation of the exclusive right;

3. (Repealed—09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

4. for resolution of disputes relating to a licence;

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

5. for contestation of decisions of the Patent Office and the Board of Appeal.

(2) Persons who infringe the exclusive rights of the owner of a utility model by wrongful behaviour bear administrative or criminal liability in the cases prescribed by law.

(3) A person who infringes the exclusive right of the owner of a utility model by a wrongful act and causes the owner proprietary damage is required to compensate for the damage. Upon use of a utility model in good faith, a court may order a compensation which does not exceed the extent of damage caused within five years before the filing of the action.

(4) The owner of a utility model has the right to file an action within three years as of the time when the owner learns who the person is who has infringed the exclusive right.

(5) Upon infringement of the exclusive right which took place prior to the publication of the notice of entry of registration data, an action shall be filed during the term specified in subsection (4) of this section or within one year as of the date of the publication of the notice of entry concerning registration data; the term which ends later shall apply.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Protection of Rights of Other Persons

§ 51.—(1) A person who uses a utility model in good faith before a registration application is filed may file an action in court against the owner of the utility model for certification of the person's right of prior use.

(2) (Repealed—09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(3) A person who uses an invention on the basis of a licence (licensee) may file an action in court for resolution of a dispute related to the licence.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(4) A licensee may also file an action upon infringement of the exclusive right of the owner of a utility model by other persons, unless otherwise prescribed upon the grant of licence. The licensee shall notify the owner of a utility model of the licensee's wish to file an action beforehand. The obligation to notify is deemed to be performed if the notice is sent to the owner of the utility model by registered mail to the address indicated in the licence agreement or the address entered in the register of utility models.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(5) Any person may, upon doubt that the person's activities may infringe the exclusive right of the owner of a utility model, file an action in court against the owner of the utility model to certify that the existence of the utility model does not hinder the person's economic or commercial activities.

Procedure for Hearing of Disputes Related to Utility Models

§ 52.—(1) In the cases provided by law, disputes related to utility models shall be heard by the Board of Appeal or in court.

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

(3) Courts shall hear disputes related to utility models pursuant to the procedure provided for in the Code of Civil Procedure (RT I 1998, 43–45, 666; 108/109, 1783; 1999, 16, 271; 31, 425), taking into consideration the specifications established in this Act.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(4) A court may refuse to hear a statement of claim if it only concerns a complaint which is subject to resolution by the Board of Appeal pursuant to this Act and the complaint has not been reviewed by the Board of Appeal.

(5) The Board of Appeal shall hear complaints filed with the Board of Appeal on the basis of this Act pursuant to the procedure provided for by the statutes of the Board of Appeal.

Burden of Proof

§ 52¹.—(1) If an action is filed on the basis of the provisions of subsection 14 (2) of this Act, the defendant is required to prove that the defendant used a process different from the process protected as a utility model for manufacturing a similar product.

(2) If the use of a different process cannot be proved, the product shall be deemed to have been manufactured according to the process protected as a utility model provided that, in spite of reasonable efforts, the owner of the utility model has not succeeded in determining the process actually used for manufacturing the product and the use of the process protected as a utility model is likely or if the product manufactured according to the process protected as a utility model is new.

(3) Evidence submitted by the defendant containing the defendant's production or business secrets may be disclosed only with the consent of the defendant.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Acts of Court Upon Filing of Statement of Claim

§ 53.—(1) In the case of an action specified in subsection 51 (4) of this Act, a copy of the notice sent to the owner of a utility model shall be annexed to the statement of claim. If the copy is missing, the court shall not proceed with the statement of claim and shall determine a term for the plaintiff for the performance of the obligation to notify.

(2) A court may order, at the request of the plaintiff, that the products or objects protected as a utility model and manufactured without the permission of the owner of the utility model, the use of which infringes the exclusive right of the owner of the utility model, shall be removed from circulation for the time of hearing the action filed for termination of an infringement of the exclusive right. If necessary, the court may demand a security from the plaintiff for compensating for the damage to the defendant upon dismissal of the action.

(3) In the case specified in subsection (2) of this section, a court may, at the request of the defendant, order that the possessor of a product or an object may continue the use of the product or object for a fair fee payable to the owner of the utility model during the entire or a part of the remaining time of the period of validity of the registration.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Participation of Patent Office

§ 54.—(1) In the court hearing of disputes related to utility models, the Patent Office may participate in the proceedings as a third party.

(2) A court shall send a copy of the court judgment made in a dispute related to a utility model to the Patent Office for its information even if the Patent Office has not participated in the proceedings.

Representatives in Resolution of Disputes in Field of Utility Models in Court

§ 55.—(1) In resolution of disputes related to utility models, patent agents may act as representatives in court.

(09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

(2) The authority of a patent agent is certified by a patent agent's certificate and an authorisation document from the client.

(3) If the plaintiff is a person whose residence or seat is in a foreign state, the person shall authorise a natural person whose residence is in the Republic of Estonia for the receipt of notices, summons and documents of the court.

Chapter XII Registration of Utility Models in Foreign States

Procedure for Registration

§ 56.—(1) Persons whose residence or seat is in the Republic of Estonia may register their utility models in foreign states regardless of the registration thereof in the Republic of Estonia.

(2) Persons whose residence or seat is in the Republic of Estonia are responsible for the registration of their utility models in foreign states in accordance with the law of the foreign state and international conventions.

§ 57. (Repealed—09.02.2000 entered into force 01.07.2000—RT I 2000, 19, 117)

Chapter XIII
Implementation of Act

Entry into Force of Act

§ 58.—(1) The Utility Models Act enters into force on 23 May 1994.

(2) The provisions of clause 10 (2) 1) of this Act apply after the membership of the Republic of Estonia in the Paris Convention for the Protection of Industrial Property is restored.

(3) The provisions of chapter VI of this Act do not apply earlier than three months after the accession of the Republic of Estonia to the Patent Cooperation Treaty entered into on 19 June 1970 in Washington.

(4) The basis for establishing priority indicated in subsections 10 (2) and (3) of this Act may only be patent applications and registration applications filed after the entry into force of this Act.
