

of

on

Budapest • 1995

**Law on the Protection
of Inventions by Patents and
Law on Patent Attorneys
Hungary**

**National Office of Inventions
of the Republic of Hungary**

Budapest • 1995

Translated by Márta Koslik

**Revised by dr. Margit Sümeghy and
Cristopher P. Ball**

**OTH - 95.062
ISBN 963 85273 5 8**

Responsible editor: dr. Ernő Szarka

Table of contents

Law No. XXXIII of 1995 on the protection of inventions by patents	5
---	---

PART I

Inventions and patents

Chapter I	Subject matter of patent protection (Sections 1 to 6)	5
Chapter II	Rights and obligations deriving from an invention and from patent protection (Sections 7 to 26)	6
Chapter III	Contracts of exploitation (Sections 27 to 30)	9
Chapter IV	Compulsory licenses (Sections 31 to 33)	10
Chapter V	Infringement of inventions and patents (Sections 34 to 37)	10
Chapter VI	Lapse of patent protection (Sections 38 to 43)	11

PART II

Procedures before the Hungarian Patent Office in patent matters

Chapter VII	General provisions governing patent procedures (Sections 44 to 53)	12
Chapter VIII	Registration of patent matters, information to the public (Sections 54 to 56)	13
Chapter IX	Patent grant procedure (Sections 57 to 78)	14
Chapter X	Other procedures in patent matters (Sections 79 to 84)	17

PART III

Court proceedings in patent cases

Chapter XI	Review of decisions of the Hungarian Patent Office (Sections 85 to 103)	18
Chapter XII	Patent litigation (Section 104)	20

PART IV

Patent protection of plant varieties and animal breeds

Chapter XIII	Provisions concerning plant varieties (Sections 105 to 109)	20
Chapter XIV	Provisions concerning animal breeds (Sections 110 to 114)	21

PART V

Final provisions

Chapter XV	Entry into force; transitional provisions (Sections 115 to 118)	22
------------	--	----

Law No. XXXII of 1995 on patent attorneys	23
---	----

Law No. XXXIII of 1995 on the protection of inventions by patents

In order to promote technical progress in the Hungarian national economy, to implement up-to-date technology, to encourage inventors both morally and financially; and in conformity with the international obligations of the Republic of Hungary concerning the protection of intellectual property, the Parliament enacts the following Law:

PART I

INVENTIONS AND PATENTS

CHAPTER I

Subject matter of patent protection

Patentable inventions Section 1

- (1) Patents shall be granted for any inventions which are new, involve inventive activity and are susceptible to industrial application.
- (2) The following, in particular, shall not be regarded as inventions within the meaning of paragraph 1:
 - a) discoveries, scientific theories and mathematical methods,
 - b) aesthetic creations,
 - c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers,
 - d) presentations of information.
- (3) Patentability of the subject matters referred to in paragraph 2 shall be excluded only to the extent to which a patent application or the patent relates to the subject matter as such.

Novelty Section 2

- (1) An invention shall be considered new if it does not form part of the state of the art.
- (2) The state of the art shall be held to comprise everything made available to the public by means of a written description or oral communication, by use, or in any other way, before the date of priority.
- (3) The content of any national patent application or utility model application – or of any application being equivalent to a national filing – having an earlier date of priority shall be also considered as comprised in the state of the art, provided that it was published or announced in the course of the application procedure at a date following the date of priority. The content of such an application published under an international treaty shall only be considered as comprised in the state of the art if the Hungarian translation of the application has been filed in compliance with the provisions of a special legislation. For

the application of these provisions, the abstract shall not be considered as comprised in the content of the application.

(4) The provisions of paragraphs 1 to 3 shall not exclude the patentability of any substance (compound) or composition, comprised in the state of the art, for use in methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body, provided that the use for such methods is not comprised in the state of the art.

Section 3

For the application of Section 2, a disclosure of the invention that occurred not earlier than six months preceding the date of priority shall not be taken into consideration as part of the state of the art if

- (a) it was due to an abuse of the rights of the applicant or his predecessors in title, or
- (b) it was due to the fact that the applicant or his predecessors in title displayed the invention at an exhibition specified in an announcement of the President of the Hungarian Patent Office published in the Hungarian Official Gazette.

Inventive activity Section 4

- (1) An invention shall be considered to involve an inventive activity if, in regard to the state of the art, it is not obvious to a person skilled in the art.
- (2) In deciding whether there has been an inventive activity, the part of the state of the art under Section 2, paragraph 3 shall not be considered.

Industrial applicability Section 5

- (1) An invention shall be considered susceptible to industrial application if it can be made or used in any kind of industry or agriculture.
- (2) Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body shall, in particular, not be regarded as susceptible to industrial application. This provision does not apply, however, to products, in particular substances (compounds) or compositions, for use in such methods.

Right to attain a patent Section 6

- (1) Patent protection shall be granted for an invention if
 - (a) it satisfies the requirements prescribed in Sections 1 to 5 of the Law and is not excluded from patent protection under the terms of paragraph 2; and
 - (b) its application complies with the requirements laid down by this Law.

- (2) No patent protection can be granted for an invention if the publication or exploitation thereof would be contrary to public order or morality; the exploitation cannot be regarded as contrary to public order merely because it is contrary to law.
- (3) Plant varieties and animal breeds shall be granted patent protection under the provisions of Chapters XIII and XIV.

CHAPTER II

Rights and obligations deriving from an invention and from patent protection

Personal rights of the inventor and his rights concerning the disclosure of the invention

Section 7

- (1) The inventor is the person who has created the invention.
- (2) So long as a final court decision does not rule to the contrary, the person mentioned as such in the application filed at the accorded filing date shall be considered to be the inventor.
- (3) If two or more persons have made an invention jointly, their shares of authorship shall be regarded as equal in the absence of an indication to the contrary.
- (4) So long as a final court decision does not rule to the contrary, the shares of authorship as indicated in the application filed at the accorded filing date or as defined under paragraph 3 shall be considered decisive.
- (5) The inventor shall have the right to be mentioned as such in the patent documents. Published patent documents shall not mention the inventor if he so requests in writing.
- (6) The inventor shall be entitled to institute legal proceedings under the Civil Code against anybody contesting his authorship or otherwise infringing on his personal rights deriving from the invention.
- (7) Prior to the publication of the patent application, the invention may only be disclosed with the consent of the inventor and his successor in title, respectively.

Right to a patent

Section 8

- (1) The right to a patent shall belong to the inventor or his successor in title.
- (2) So long as a final court decision or another official decision does not rule to the contrary, the right to a patent shall belong to the person who filed the application with the earliest date of priority.
- (3) If two or more persons have created an invention jointly, the right to the patent shall belong jointly to them or their successors in title. Where there are two or more persons entitled to the right, the shares of their entitlement shall be regarded as equal in the absence of an indication to the contrary.
- (4) If two or more persons have created an invention independently of each other, the right to the patent shall belong to the inventor or his successor in title who filed the application with the earliest date of priority.

Employee's service invention and employee's dependent invention

Section 9

- (1) An employee's service invention (hereinafter referred to as "service invention") is an invention made by a person who, by reason of his employment, is under the obligation to develop solutions in the field of the invention.
- (2) An employee's dependent invention (hereinafter referred to as "dependent invention") is an invention made by a person who, without being under an obligation by reason of his employment, makes an invention, the exploitation of which falls within the scope of business of his employer.

Section 10

- (1) The right to a patent for a service invention shall belong to the employer as successor in title of the inventor.
- (2) The right to a patent for a dependent invention shall belong to the inventor, the employer is, however, entitled to exploit the invention. The right of exploitation of the employer shall be non-exclusive; the employer cannot grant any license of exploitation. If the employer ceases to exist or if any of its organizational units is separated, the right of exploitation shall be transferred to its successor in title; it may not be assigned or transferred in any other way.

Section 11

- (1) The inventor shall notify the employer of a service or dependent invention immediately following its creation.
- (2) Within ninety days from the receipt of the notification the employer shall make a declaration to the effect that he does or does not claim title to the service invention, and as to his intentions concerning the exploitation of the dependent invention, respectively.
- (3) The employer may exploit the dependent invention only without prejudice to the right of the inventor to disclose the invention (Section 7, paragraph 7).
- (4) The inventor may dispose of a service invention when the employer gives his consent or fails to make the declaration under paragraph 2.
- (5) The right to a patent for a dependent invention shall belong to the inventor without the burden of the employer's right of exploitation if the employer gives his consent or fails to make the declaration under paragraph 2.

Section 12

- (1) The employer shall file a patent application within a reasonable period following the receipt of the notification of the service invention; he shall furthermore proceed with the generally expectable diligence in order to obtain a patent.
- (2) Provided that the patentability of the invention at the date of receipt of its disclosure has been acknowledged by the employer, and that the invention is kept secret and exploited within the trade as such, the employer can disregard the filing of a patent application or may withdraw the application. The employer shall notify the inventor of such a decision.
- (3) In the case of disputes the burden of proving that a solution was not patentable at the date of receipt of the disclosure shall be on the employer.
- (4) Prior to making any act excluding the grant of a patent or prior to a wilful omission to this effect, the employer is, in the

case of the service invention, obliged – except for the case under paragraph 2 – to offer to the inventor to assign the right to a patent free of charge, with or without stipulating the right of exploitation applicable to dependent inventions.

(5) The provisions under paragraph 4 shall not apply where the inventor has already received fair remuneration with regard to the provisions of this Law.

Remuneration to be paid for service inventions Section 13

(1) Where a service invention is utilized, the inventor shall be entitled to remuneration

(a) if the invention is protected by a patent from the beginning of its utilization up to the lapse of the definitive patent protection;

(b) if the definitive patent protection of the invention lapses due to surrender or failure to pay the maintenance fee by the employer, from the beginning of the utilization up to the date on which the patent would have lapsed because of expiration;

(c) if the invention is kept secret from the beginning of the utilization up to the disclosure of the invention or up to 20 years from the date on which the employer is notified of the invention, whichever expires later.

(2) The following shall be considered utilization of a service invention:

a) the exploitation of the invention (section 19), including omission of exploitation in order to create or to maintain an advantageous market position;

(b) the grant of a license of exploitation to third parties;

(c) the total or partial assignment of the right to a patent or of the patent.

(3) The inventor has a separate title to remuneration for the exploitation, for each license of exploitation and for the assignment and even if the license of exploitation is granted or the assignment is made without valuable consideration. The entitlement to remuneration shall not be affected should one or more elements of the patent claim be replaced in the product or in the process by improved elements made available by the inventor.

(4) Remuneration shall be paid by the employer, and in the case of a joint patent – in the absence of an agreement of the joint patentees to the contrary – by the patentee exploiting the invention. In the case of a license of exploitation or assignment, the acquirer of the rights may assume the obligation to pay remuneration.

(5) Remuneration shall be due in the case of utilization based on a foreign patent or on another legal protection to the same effect; however, no remuneration for the exploitation shall be due if the inventor is entitled to it on the basis of a national patent.

(6) Remuneration for the inventor is subject to his contract concluded with the employer, with the exploiting patentee or the person acquiring the rights (contract of remuneration).

(7) Remuneration for the exploitation of the invention shall be commensurate with the royalty the employer or the exploiting patentee would have to pay on the basis of a patent license agreement, taking into account the licensing conditions in the technical field of the subject matter of the invention.

(8) In the case of a license of exploitation or of an assignment of the patent, the remuneration shall be commensurate with the value of the license of exploitation and the assignment, respectively, or with the benefit deriving from a license of exploitation or assignment without valuable consideration.

(9) In assessing remuneration, the proportions under paragraphs 7 and 8 shall be determined taking into account the employer's contribution to the invention concerned and the duties of the inventor arising from his employment. Where an invention is kept secret, the disadvantages caused to the inventor by the failure to obtain protection shall also be considered.

Remuneration to be paid for the exploitation of a dependent invention Section 14

(1) Remuneration for the right to exploit a dependent invention shall be paid by the employer, and in the case of several employers – in the absence of an agreement to the contrary – by the employer exploiting the invention.

(2) The remuneration of the inventor is subject to his contract concluded with the employer.

(3) The amount of the remuneration for the right to exploit a dependent invention shall be equal to that which would be payable by the employer for a license of exploitation, on the basis of a patent license agreement, taking into account the licensing conditions in the technical field of the subject matter of the invention.

Common provisions relating to service and dependent inventions Section 15

(1) The contract of remuneration, the contract governing remuneration due in the case of the exploitation of a dependent invention, as well as any disclosure, statement, notification or information relating to service and dependent inventions and prescribed by this Law shall be made in writing.

(2) With respect to rights and obligations deriving from service and dependent inventions, no deviation by contract from the provisions of this Law safeguarding the interests of the inventor is possible.

Section 16

(1) All disputes concerning the service or dependent character of an invention, the patentability of an invention kept secret, and the remuneration due to the inventor of a service or dependent invention shall be within the competence of the court.

(2) The board of experts for inventions at the Hungarian Patent Office shall, on commission or at the request of the court, give an expert opinion on matters concerning patentability of an invention kept secret, and remuneration due to the inventor of a service or dependent invention.

(3) Members of the board of experts shall be appointed by the President of the Hungarian Patent Office for a period of five years, from adequately skilled persons proposed, in particular, by national interest groups of employers, employees and inventors, the Chamber of Patent Attorneys and national economic chambers, as well as from the civil servants of the Hungarian Patent Office. Detailed rules on the board of experts shall be laid down by special legislation.

Section 17

With respect to inventions created by civil servants, by persons being professional members of the armed forces and of the p-

lice – persons in service relations – or by members of a cooperative being in a legal relationship equal to an employment, the provisions of paragraphs 9 to 16 shall apply *mutatis mutandis*.

Establishment of patent protection Section 18

- (1) Patent protection comes into existence through the publication of the patent application. The protection shall be effective retroactively from the date of application.
- (2) Protection arising from publication shall be provisional. It shall become definitive if a patent for the invention is granted to the applicant.

Rights conferred by the patent Section 19

- (1) By virtue of patent protection, the owner of the patent (patentee) shall have the exclusive right to exploit the invention.
- (2) On the basis of the exclusive right of exploitation the patentee shall be entitled to prevent all third parties not having his consent,
 - (a) from making, using, putting on the market or offering for sale a product which is the subject matter of the invention, or importing the product for these purposes;
 - (b) from using a process which is the subject matter of the invention, or – where the third party knows, or it is obvious in the circumstances, that the process cannot be used without the consent of the patentee – from offering the process for use;
 - (c) from making, using, putting on the market, offering for sale, or importing for such purposes the product obtained directly by a process which is the subject matter of the invention.
- (3) On the basis of the exclusive right of exploitation the patentee shall also be entitled to prevent any person not having his consent from supplying or offering to supply a person, other than a party entitled to exploit the invention, with means (instruments, appliances) relating to an essential element of the invention, for carrying out the invention, when this person knows, or it is obvious in the circumstances, that those means are suitable and intended for carrying out the invention.
- (4) The provisions under paragraph 3 shall not apply when the supplied or offered means are staple commercial products, except when the supplier or offerer deliberately induces his client to commit the acts referred to in paragraph 2.
- (5) For the application of paragraph 3, persons performing acts not falling within the exclusive right of exploitation – as referred to in paragraph 6 – shall not be considered to be parties entitled to exploit the invention.
- (6) The exclusive right of exploitation shall not extend to
 - (a) acts done privately or falling outside the domain of economic activity;
 - (b) acts done for experimental purposes relating to the subject matter of the invention, including experiments and tests necessary for the registration of medicines;
 - (c) preparation for individual cases, in a pharmacy, of a medicine in accordance with a medical prescription, or acts concerning the medicine so prepared.
- (7) In the absence of proof to the contrary, a product shall be deemed to have been obtained by the patented process if the product is new, or a substantial likelihood exists that the product was made by the patented process, and the patentee has been

unable, despite reasonable efforts, to determine the process actually used. A substantial likelihood that the product was made by the patented process exists, in particular, when the patented process is the only one known.

Exhaustion of the exclusive right of exploitation conferred by patent protection Section 20

The exclusive right of exploitation conferred by patent protection shall not extend to acts concerning the product put on the market in the country by the patentee or with his express consent.

Limitations of patent protection Section 21

- (1) A right of prior use shall belong to any person who, in good faith, before the date of priority, in the territory of the country and within the framework of his economic activities, started to make or use the subject matter of the invention, or made serious preparations with a view to doing so.
- (2) Any prior user shall be considered to be a *bona fide* user until it is proved that the prior use has been based on the inventive activity creating the patented product.
- (3) Patent protection shall have no effect against the prior user to the extent of the making, using or the preparations existing at the date of priority. The right of the prior user may only be transferred together with an entitled economic organization (Civil Code, Section 685 (c)), or with that part of the economic organization in which such making, using or preparations have been made.
- (4) A right of further use shall belong to any person who, in the period between the declaration of the lapse of patent protection and the restoration thereof, in the territory of the country and within the framework of his economic activities, started to make or use the subject matter of the invention, or made serious preparations with a view to doing so. With respect to the rights of the further user, the provisions of paragraph 3 shall apply *mutatis mutandis*.
- (5) In the case of reciprocity, patent protection shall have no effect with respect to means of communication and transport which are in transit in the territory of the country, or to foreign goods which are not intended to be put on the market in the country. In matters of reciprocity, the President of the Hungarian Patent Office shall be competent to give a ruling.

Duration of patent protection Section 22

Definitive patent protection shall have a duration of twenty years beginning on the filing date of the application.

Maintenance of patent protection Section 23

- (1) For the duration of patent protection, annual patent fees, to be determined by special legislation, shall be paid. The fee for the first year shall be due on the filing date, and the fees for the subsequent years shall be payable in advance, on the anniversaries of the filing date.

CHAPTER III

Contracts of exploitation

Conclusion of contracts of exploitation Section 27

- (1) Under a contract of exploitation (patent license contract), the patentee is licensing the right to exploit the invention, whereas the person exploiting the invention (licensee) is obliged to pay royalties.
- (2) The parties are free to determine the contents of the contract of exploitation. Any clause conflicting with the prohibition to restrict economic competition by agreement or having a purpose incompatible with the social functions of the rights conferred by a patent is, however, void.
- (3) The refusal to conclude a contract of exploitation does not in itself represent an abuse of a dominant economic position.

Rights and obligations of the parties Section 28

- (1) The patentee shall guarantee, for the whole duration of the contract of exploitation, that third parties have no rights to the patent preventing or limiting the right of exploitation. This guarantee shall be subject to the same rules as those applicable to a vendor in the case of transferring proprietary rights, with the difference that the licensee may, instead of cancellation, terminate the contract with immediate effect.
- (2) The patentee shall also guarantee the technical practicability of the invention. The same rules apply to this guarantee as to the legal consequences of faulty performance, with the difference that the licensee may, instead of cancellation, terminate the contract with immediate effect.
- (3) The contract of exploitation shall cover all patent claims and every mode of exploitation to any extent whatever, without limitation in time or territory.
- (4) A right of exploitation shall be exclusive only if expressly stipulated by contract. In the case of an exclusive license of exploitation the patentee can also exploit the invention in addition to the licensee acquiring the right of exploitation, unless it is expressly excluded by the contract. The patentee may terminate the exclusivity of a license of exploitation, subject to a proportional reduction in the royalty, if the licensee does not commence with exploitation within a generally reasonable period of time.
- (5) The patentee shall inform the licensee of any third party rights in relation to the patent if any, as well as of any other important circumstances. Nevertheless, he shall be obliged to transfer economic, technical and organizational know-how only if this has been expressly agreed upon.
- (6) The licensee may assign the license or may grant sub-licenses to third parties only with the express consent of the patentee.
- (7) The patentee shall maintain the patent.

Lapse of the contract of exploitation Section 29

The contract of exploitation shall lapse, with effect for the future, when the contracted period expires, or certain specified circumstances occur, or when the patent protection has lapsed.

(2) The annual fees which become due before the publication of the patent application shall be payable within a period of grace of six months from the date of publication, the annual fees which become due before the grant of a patent treated as state secret shall be payable within a period of grace of six months from the date on which the decision on the grant comes into effect, and the other annual fees shall be payable within a period of grace of six months from the due date.

Scope of patent protection Section 24

- (1) The scope of protection conferred by the patent shall be determined by the claims. The claims are to be interpreted on the basis of the description and drawings.
- (2) Patent protection shall cover any product or process in which all the characteristics of the claim are realized.
- (3) The terms of the claims shall not be confined to their strict literal wording; neither shall the claims be considered as mere guidelines for a person skilled in the art to determine the claimed invention.

Succession in title Section 25

Rights deriving from an invention and from patent protection, with the exception of personal rights, may be transferred, assigned and pledged.

Joint right to a patent and joint patent Section 26

- (1) Where there are two or more patentees for the same patent, each of the joint patentees may dispose of his own share. With respect to the share of a joint patentee, the other joint patentees shall have a right of pre-emption vis-à-vis third parties.
- (2) The invention may be exploited solely by any of the joint patentees, who is, however, obliged to pay appropriate remuneration to the other joint patentees, in proportion to their shares.
- (3) A license of exploitation to a third party may only be granted jointly by the joint patentees. A judicial decision may be substituted for the collective consent under the general provisions of civil law.
- (4) In case of doubt, the shares of joint patentees shall be equal. If one of the joint patentees surrenders patent protection, the rights of the other joint patentees shall extend to his share, in proportion to their own shares.
- (5) Any of the joint patentees may also proceed individually to maintain and protect patent rights. His legal acts – compromise, recognition and waiver of rights excepted – are binding on any other joint patentee who has failed to observe a time limit or to perform a required act, provided that he has not subsequently remedied his omission.
- (6) Where the acts of the joint patentees differ, a decision shall be made taking into account all other relevant facts to the procedure.
- (7) Costs concerning the patent are to be acquitted by the joint patentees in proportion to their shares. If, despite being notified, a joint patentee does not acquit the cost charged to him, the joint patentee bearing the cost may claim the assignment of the share of the joint patentee having not met his obligation.
- (8) The provisions concerning joint patents shall apply *mutatis mutandis* to joint patent applications.

*Effect of provisions relating
to contracts of exploitation*
Section 30

- (1) The parties, by mutual consent, may deviate from the provisions relating to contracts of exploitation where this is not prohibited by law.
- (2) Matters relating to contracts of exploitation and not covered by this Law shall be governed by the provisions of the Civil Code.

CHAPTER IV

Compulsory licenses

Compulsory licenses for lack of exploitation
Section 31

If within four years from the date of filing of the patent application, or within three years from the grant of the patent, whichever period expires last, the patentee has not exploited the invention in the territory of the country to satisfy the domestic demand or if he has not undertaken serious preparations or has not granted a license for such purpose, a compulsory license shall be granted, on request, to an enterprise having domicile in the country (Section 685(c) of the Civil Code is relevant for defining persons in this category), unless the patentee justifies the lack of exploitation.

Compulsory licenses in respect of dependent patents
Section 32

- (1) If the patented invention cannot be exploited without infringing on another patent (hereinafter referred to as "the dominant patent"), a compulsory license shall be granted, on request and to the extent necessary for the exploitation of the dominant patent, to the owner of the dependent patent, provided that the invention claimed in the dependent patent involves an important technical advance of considerable economic significance in relation to the invention claimed in the dominant patent.
- (2) Where a compulsory license has been granted under paragraph 1 with respect to a dominant patent, the owner of such a patent shall be entitled on reasonable terms to a license to exploit the invention claimed in the dependent patent according to the common provisions on compulsory licenses.

Common provisions on compulsory licenses
Section 33

- (1) The application for a compulsory license shall establish that the requirements for a compulsory license are complied with, further that
 - (a) the patentee was unwilling to grant a voluntary license to exploit the patent under appropriate conditions and within a reasonable period of time, and
 - (b) exploitation of the invention to the required extent is ensured.
- (2) The scope and duration of a compulsory license shall be established by the court, taking into account the purpose of the exploitation authorized by the compulsory license; a com-

pulsory license may be granted with or without limitation. Unless renounced or cancelled, a compulsory license shall have effect until expiration of the duration fixed by the court or until the lapse of patent protection. Compulsory licenses shall be recorded in the Patent Register.

(3) The patentee shall receive adequate compensation for the compulsory license, which shall be fixed, failing agreement between the parties, by the court. The compensation shall take into adequate account the economic value of the compulsory license. In particular, it shall be commensurate with the royalty the holder of the compulsory license would have paid on the basis of a contract of exploitation concluded with the patentee, taking into account the licensing conditions in the technical field of the invention.

(4) The holder of a compulsory license shall have the same rights as the patentee in regard to the maintenance of the patent and the exercise of the rights deriving from protection.

(5) If the enterprise holding a compulsory license ceases to exist or if any of its organizational units is separated, the compulsory license shall be transferred to the successor in title. A compulsory license granted with respect to a dominant patent may only be assigned together with the dependent patent. However, a compulsory license may not be assigned or transferred to any other person. The holder of a compulsory license may not grant a license of exploitation.

(6) The holder of a compulsory license may renounce his compulsory license at any time. If the holder does not start exploitation within one year from the definite grant of the compulsory license, the patentee may claim modification or cancellation of the compulsory license.

(7) The patentee may request modification or cancellation of a compulsory license if the circumstances on which it was based cease to exist and are unlikely to recur. Modification or cancellation shall take a form that does not prejudice the legitimate interests of the holder of the compulsory license.

CHAPTER V

Infringement of inventions and patents

Infringement of invention
Section 34

Where the subject matter of a patent application or patent has been taken unlawfully from the invention of another person, the injured party or his successor in title may claim a statement to the effect that he is entitled wholly or partly to the patent and may claim damages under the rules of civil liability.

Patent infringement
Section 35

- (1) Any person who unlawfully exploits a patented invention commits patent infringement.
- (2) The patentee may, according to the circumstances of the case, have recourse to the following civil remedies:
 - (a) request that the fact of infringement be declared by the court;
 - (b) request an injunction in order to stop the infringement and enjoin the infringer from continuing the infringement;

(c) demand satisfaction from the infringer by way of a declaration or by other appropriate means and, if necessary, the declaration shall be made public by the infringer or at his expense;

(d) demand restitution for the enrichment obtained by infringement of the patent;

(e) request the seizure of the means used for infringement and of the infringing products.

(3) The court may rule, according to the circumstances of the case, that the means and products seized be divested of their infringing character or, would this be not possible, destroyed. Instead of destruction the court may order that the means and products seized be auctioned according to court procedure; in this case the court shall decide on the sum collected.

(4) In the case of patent infringement, the patentee may also claim damages under the rules of civil liability.

Rights of the applicant and the licensee in the event of patent infringement Section 36

(1) An applicant whose invention benefits from provisional protection may also institute proceedings for patent infringement; however, the proceeding shall be suspended until the decision to grant the patent has become final.

(2) In the event of patent infringement, the licensee of a contractual license may invite the patentee to take appropriate action in order to stop the infringement. If the patentee fails to take action within thirty days from the invitation, the licensee recorded in the Patent Register may institute proceedings for patent infringement in his own name.

Decision on non-infringement Section 37

(1) Any person who fears that proceedings for patent infringement will be instituted against him may, prior to the institution of such proceedings, request a decision ruling that the product or process exploited or to be exploited by him does not infringe on a particular patent specified by him.

(2) In the case of a final decision on non-infringement, the institution of infringement proceedings is excluded by virtue of the same patent and in respect of the same product or process as specified in that decision.

CHAPTER VI

Lapse of patent protection

Lapse of provisional patent protection Section 38

Provisional patent protection shall lapse with retroactive effect to the date of its establishment:

(a) if the patent application is definitely rejected;
(b) if the annual fees have not been paid even during the period of grace;

(c) if the applicant has surrendered the protection.

Lapse of definitive patent protection Section 39

Definitive patent protection shall lapse

(a) when the period of protection expires, on the day following the date of expiration;

(b) if the annual fees have not been paid even during the period of grace, on the day following the due date;

(c) if the patentee surrenders the protection, on the day following receipt of the surrender or at an earlier date specified by the person surrendering the protection;

(d) if the patent is revoked, with retroactive effect to the filing date of the application.

Restoration of patent protection Section 40

(1) If patent protection has lapsed by reason of non-payment of annual fees, the protection shall be restored at the request of the applicant or the patentee.

(2) The restoration of patent protection may be requested within three months following the expiry of the period of grace. A fee determined by special legislation shall be payable within this time limit.

Surrender of patent protection Section 41

(1) The applicant named in the Register of Patent Applications, or the patentee named in the Patent Register may surrender patent protection by written declaration addressed to the Hungarian Patent Office.

(2) If the surrender affects the rights of third parties deriving from legislation, from decisions of an authority, from a license contract or any other contract recorded in the Patent Register, or if a suit is recorded in the Patent Register, it shall take effect only with the consent of the parties concerned.

(3) It shall also be possible to surrender certain claims of the patent.

(4) Withdrawal of the surrender of patent protection shall have no legal effect.

Revocation and limitation of patents Section 42

(1) The patent shall be revoked with retroactive effect to its establishment if

(a) the subject matter of the patent does not satisfy the requirements laid down in Section 6, paragraph 1(a);

(b) the description does not disclose the invention in a clear and complete manner as required by this Law (Section 60, paragraph 1);

(c) the subject matter of the patent extends beyond the content of the application as filed at the accorded filing date or – in the case of division – beyond the content of the divisional application.

(2) If the grounds for revocation affect the patent only partially, revocation shall be pronounced in the form of a corresponding limitation of the patent.

(3) Should the request for revocation be rejected by a final decision, the institution of a new procedure for the rev-

ocation of the same patent on the same grounds is excluded for anybody.

Reclaiming of fees
Section 43

If definitive patent protection lapses with retroactive effect to its establishment, only that portion of the remuneration collected by the patentee or the inventor may be reclaimed that was not covered by the benefits derived from the exploitation of the invention.

PART II

*PROCEDURES BEFORE THE HUNGARIAN
PATENT OFFICE IN PATENT MATTERS*

CHAPTER VII

General provisions governing patent procedures

Competence of the Hungarian Patent Office
Section 44

The Hungarian Patent Office is the administrative authority for industrial property with country-wide competence; it shall have authority in the following patent matters:

- (a) the grant of patents,
- (b) the decision on the lapse of patent protection and the restoration of patent protection,
- (c) the revocation of patents,
- (d) the decision on non-infringement,
- (e) the interpretation of patent descriptions,
- (f) the recording of patent applications and patents, including matters concerning their maintenance,
- (g) the official information on patent matters.

*Application of the general provisions
of administrative procedure*
Section 45

The Hungarian Patent Office shall proceed in patent matters under its competence, with the exceptions laid down in this Law, by applying the provisions of Law No. IV of 1957 on the general rules of administrative procedure.

Decisions of the Hungarian Patent Office
Section 46

- (1) In revocation procedures, in procedures for a decision on non-infringement and for the interpretation of a patent description the Hungarian Patent Office shall proceed by a board consisting of three members; the board shall take decisions by a majority.
- (2) Decisions on the grant of patents, on the lapse of patent protection, on the restoration of patent protection, on the revocation of patents and on non-infringement shall be considered decisions on the merits.

(3) Decisions of the Hungarian Patent Office shall come into force upon delivery unless a review thereof is requested.

(4) The Hungarian Patent Office may withdraw or modify its decisions on the merits of patent matters only on the basis of a request for review and until its transmittal to the court. Its decisions may not be invalidated or changed by a supervisory authority; they shall be without appeal.

(5) The decisions on patent matters of the Hungarian Patent Office may be changed by the court, in conformity with the provisions of Chapter IX.

Establishment of facts
Section 47

(1) In procedures before it, the Hungarian Patent Office shall examine the facts of its own motion, it shall not be restricted in this examination to the statements and requests of the parties. However, its decisions may only be based on facts or evidence on which the parties concerned have had an opportunity to present their comments.

(2) The parties shall be invited or notified to remedy insufficiencies of documents submitted in patent matters.

Time limits
Section 48

(1) The time limits prescribed by this Law shall not be extended. Non-observance of these time limits shall involve legal consequences without notice.

(2) Where this Law does not prescribe any time limit to remedy insufficiencies or to submit a statement, a time limit of at least thirty days shall be fixed which may be extended on request before the expiration of the period. A time limit of more than three months and more than three extensions of a time limit may be given only in special cases.

(3) The time limits generally prescribed to terminate administrative procedures shall not apply to patent matters.

Restitutio in integrum
Section 49

(1) In patent matters – unless excluded under paragraph 5 – a request for *restitutio in integrum* may be submitted within fifteen days from the unobserved time limit or the last day of the unobserved period. The request must state the grounds of the non-observance in question and the circumstances making it likely that the non-observance occurred guiltlessly.

(2) Where the non-observance has later become known to the party or the cause thereof has later been removed, the time limit shall be reckoned from the date on which the non-observance has become known or the cause thereof has been removed. The request for *restitutio in integrum* shall only be admissible within six months following the unobserved time limit or the last day of the unobserved period.

(3) In the case of non-observance of a time limit, the omitted act must be completed simultaneously with the filing of the request for *restitutio in integrum* or – if it is admissible – an extension of the time limit may be requested.

(4) If the Hungarian Patent Office grants *restitutio in integrum*, the acts completed by the party in default shall be considered as if they had been performed within the unobserved time limit, the hearing held on the unobserved day shall be repeated as far

as necessary. In accordance with the outcome of the new hearing, it shall be decided whether the decision taken at the original hearing should stand or should be revoked in whole or in part.

(5) *Restitutio in integrum* is excluded

(a) in the event of non-observance of the time limit prescribed for filing the declaration of priority (Section 61, paragraph 2) or of the time limit of twelve months fixed for claiming convention priority,

(b) in the event of non-observance of the time limit fixed for derivation (Section 62),

(c) in the event of non-observance of the time limit fixed for filing the declaration of exhibition (Section 64, paragraph 1(a)) and of the time limit of six months for benefiting from an exhibition (Section 3, paragraph (b)),

(d) in the event of non-payment of the annual fees (Section 23).

Interruption and suspension of the procedure

Section 50

(1) In the event of the death of a party or the dissolution of a legal entity, the procedure shall be interrupted until the person of the successor in title is registered and his claim justified.

(2) Where legal proceedings are instituted with respect to the entitlement to file a patent application or the right to a patent, the patent procedure shall be suspended until the court decision becomes final.

Representation

Section 51

(1) Foreign applicants shall be obliged to be represented by an authorized patent attorney or an attorney-at-law, having residence in the country, in all patent matters within the competence of the Hungarian Patent Office.

(2) A power of attorney shall be drawn up in a public instrument or in a private paper having the force of evidence. A power of attorney given to a patent attorney or an attorney-at-law shall be valid if signed only by the principal.

(3) The Hungarian Patent Office shall appoint a trustee from among patent attorneys and attorneys-at-law

(a) for the unknown heirs or for a party staying in an unknown place, at the request of the adverse party, or

(b) for a foreign party not having an authorized representative.

Use of languages

Section 52

(1) The language of patent procedures shall be Hungarian, the patent description with the claims, any text matter of the drawings and the abstract shall be in Hungarian.

(2) In patent matters, documents in foreign languages may also be filed, the Hungarian Patent Office may, however, require that a translation into Hungarian, where necessary certified, be filed.

Access to the files

Section 53

(1) Prior to the publication of the patent application, only the applicant, his representative, the expert, or the body called upon

to give an expert opinion may inspect the files. The inventor may inspect the files even if he is not the applicant.

(2) The following shall be excluded from inspection even after the publication:

(a) draft decisions, and all other documents used for the preparation of decisions and expert opinions, which are not communicated to the parties,

(b) documents relating to the designation of the inventor if he has requested to waive the publication of his name,

(c) documents constituting state secret.

(3) Upon payment of a fee, the Hungarian Patent Office shall issue copies of documents that may be inspected.

(4) Procedures in patent matters shall be public only if there is an adverse party participating.

(5) The President of the Hungarian Patent Office may order at the request of the competent Minister and in the interest of national defence that the patent application be dealt with as a state secret. In that case, publication of the application and printing of the description shall be waived and other procedures relating to the patent shall also be qualified as state secret.

CHAPTER VIII

Registration of patent matters, information to the public

Register of patent applications, Patent Register

Section 54

(1) The Hungarian Patent Office shall keep a Register of Patent Applications and a Register of Patents which shall contain all facts and circumstances concerning patent rights.

(2) The Patent Register shall contain, in particular, the following entries:

(a) registration number of the patent,

(b) reference number,

(c) title of the invention,

(d) name (official designation) and address (place of business) of the patentee,

(e) name and place of business of the representative,

(f) name and address of the inventor,

(g) filing date of the application,

(h) priority data,

(i) date of the decision on the grant of patent,

(j) amount of the annual fees paid and date of payment,

(k) legal title and date of the lapse of protection and limitation of the patent,

(l) licenses of exploitation.

(3) Any right relative to patent protection may be invoked against a third party who acquired his right in good faith and for a consideration if it is recorded in the Patent Register.

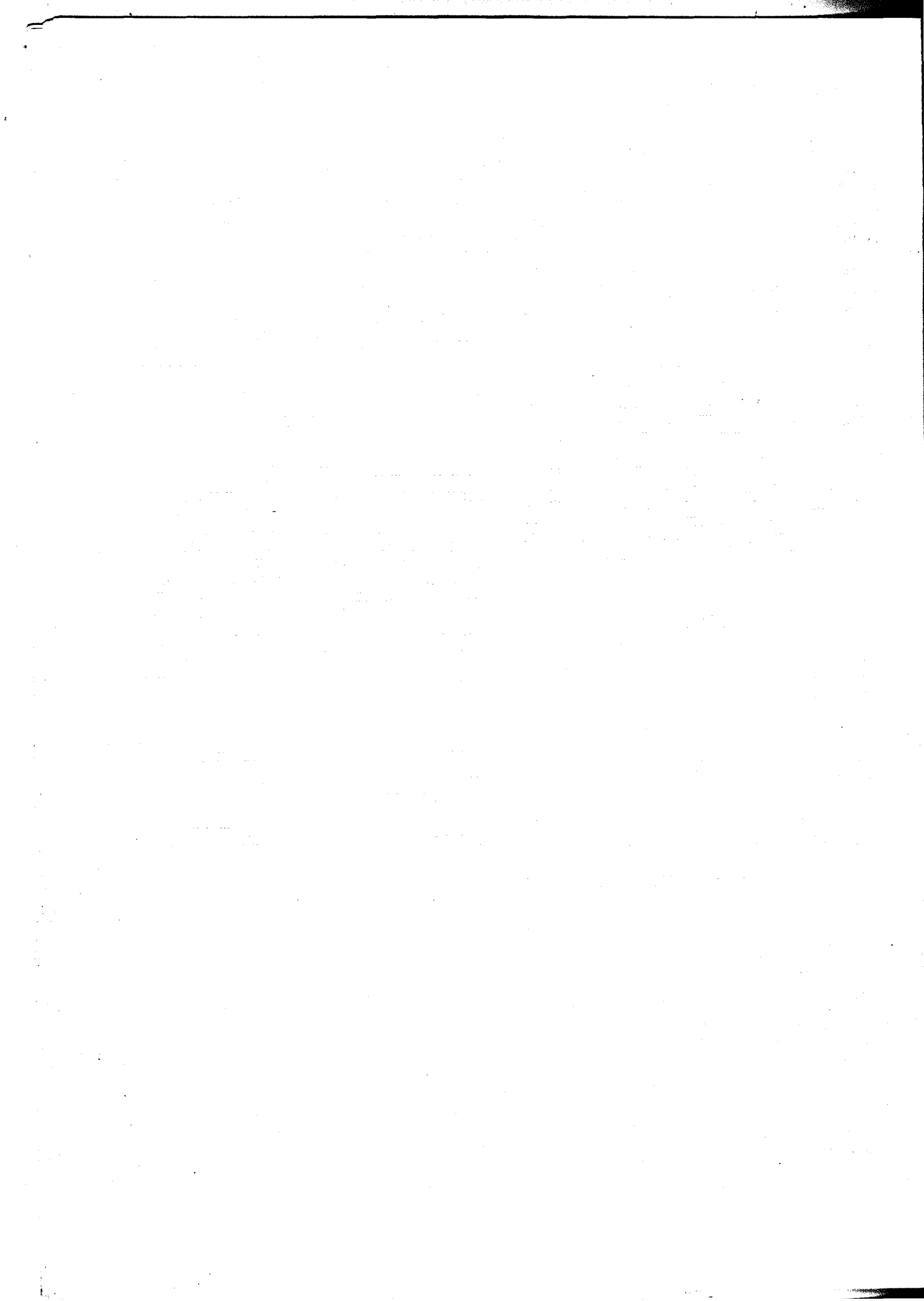
(4) Any person may have access to the Patent Register and may ask for a copy of the registered data with payment of a fee.

(5) Following publication of the applications, the provisions of paragraphs 3 and 4 shall apply *mutatis mutandis* to the Register of Patent Applications.

Entries in the Patent Register

Section 55

(1) Entries in the Register of Patent Applications or in the Patent Register shall be made only based on the decisions of the Hungarian Patent Office or on court decisions. In the case of



(c) the date of filing of a previously filed and pending patent application for the same subject matter, which is not earlier than twelve months prior to the current filing, provided that it has not served as a basis for claiming a right of priority (internal priority).

(2) Convention and internal priority shall be claimed within two months after the filing of the application. The document establishing convention priority shall be filed within four months after the date of filing of the application.

(3) If internal priority is claimed, the previous patent application shall be considered withdrawn.

(4) In the patent application, multiple priorities may be claimed for any one claim.

(5) If one or more priorities are claimed with respect to a patent application, the right of priority shall cover only those elements that are disclosed by the application establishing the given priority in accordance with Section 60, paragraph 1.

Derivation from utility model application Section 62

(1) Where the applicant has already filed a utility model application at an earlier date, he may, in his declaration of priority filed within two months after the date of filing of a patent application for the same subject matter, claim the filing date of the utility model application and the right of priority relating to the said application (derivation).

(2) Derivation of a patent application shall be admissible within three months from the date when the decision on the grant of utility model protection becomes final, but not later than within twenty years from the filing date of the utility model application.

Deposit and availability of microorganisms Section 63

(1) If an invention involving the use of a microorganism, which is not available to the public, cannot be disclosed in the patent application, as prescribed in Section 60, paragraph 1, a certification shall be filed attesting the fact that a culture of the microorganism has been deposited under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

(2) If the culture of a microorganism is deposited after the filing of the patent application, the date of deposit shall be regarded as the date of filing.

(3) The certification of deposit may be submitted within a period of four months after the date of filing.

(4) The deposited culture shall be made available by the depositary institution by furnishing samples to any person after the date of publication of the patent application, and to any person having the right to inspect the files under the provisions of Section 53, paragraph 1, prior to that date.

(5) The person to whom a sample of the microorganism has been furnished may not make the deposited culture or any culture derived therefrom available to any third party before the termination of the patent grant procedure or before the lapse of patent protection, and, with the exception of a holder of a compulsory license, he may use the deposited culture only for experimental purposes. A derived culture is deemed to be any culture of the microorganism which still has those characteristics of the deposited culture which are essential to carry out the invention.

Declaration and certification of exhibition Section 64

(1) The applicant may request under Section 3, paragraph (b) that the display of his invention at an exhibition shall not be taken into consideration, when the state of the art is determined, if

(a) he files a statement to this effect within two months after the date of filing of the patent application, and

(b) he files, within four months after the date of filing of the patent application, a certificate issued by the authority responsible for the exhibition about the fact and date of the exhibition.

(2) The certificate must be accompanied by the description and, if necessary, the drawings bearing identification of the authority responsible for the exhibition.

(3) The certificate may only be issued during the period of the exhibition and only while the invention or its disclosure can be seen at the exhibition.

Examination on filing Section 65

Following the filing of a patent application, the Hungarian Patent Office shall examine whether

(a) the application satisfies the requirements for the accordance of a date of filing (Section 58),

(b) the filing fee and the search fee have been paid (Section 57, paragraph 4),

(c) the description, the abstract and the drawings have been filed in the Hungarian language (Section 57, paragraph 5).

Section 66

(1) If a date of filing cannot be accorded, the applicant shall be invited to correct the deficiencies within 30 days.

(2) If the applicant complies with the invitation within the specified time limit, the date of receipt of the correction shall be accorded as the date of filing. Otherwise the patent application shall be considered withdrawn.

(3) The applicant shall be notified of the accorded date of filing.

(4) If the filing fee and the search fee have not been paid, or the patent description, the abstract and the drawings have not been filed in the Hungarian language, the Hungarian Patent Office shall invite the applicant to remedy the deficiencies within the period specified by this Law (Section 57, paragraphs 4 and 5). Failing that, the application shall be considered withdrawn.

Communication of certain data Section 67

If, either on filing or as a result of a correction, a patent application complies with the requirements prescribed for according a date of filing, the Hungarian Patent Office shall publish the official information specified in Section 56, paragraph (a) in its official journal (communication of certain data).

Examination as to formal requirements Section 68

(1) If a patent application satisfies the requirements examined under Section 65, the Hungarian Patent Office shall examine

(2) A patent application shall be rejected as a whole or in part if it does not meet the examined requirements even after the correction of the deficiencies or the statement.

(3) An application may be rejected only on grounds that have been precisely and expressly indicated and duly reasoned in the invitation. Where necessary, further invitation shall be issued.

(4) If the applicant fails to reply to the invitation or to divide the application, it shall be considered as if he surrendered provisional patent protection.

Grant of patent Section 77

(1) If the patent application and the invention to which it relates meet all the requirements of the examination (Section 74, paragraph 2), the Hungarian Patent Office shall grant a patent for the subject matter of the application.

(2) Before the grant of the patent, the text of the description, claims and drawings forming the basis for the grant shall be transmitted to the applicant who may indicate, within three months, his approval of the text transmitted.

(3) If the applicant approves the text or fails to make a statement, a patent shall be granted on the basis of the description, claims and drawings as transmitted. If the applicant proposes amendments or files a new description, claims and drawings, the Hungarian Patent Office shall decide whether these shall be taken into account when stating the final text.

(4) Before the grant of the patent, fees for grant and printing fixed by special legislation shall be payable within a period of three months set for the statement under paragraph 2. Failure to pay the said fees shall be considered as if the applicant surrendered provisional patent protection.

Section 78

(1) After the grant of the patent, the Hungarian Patent Office shall issue a patent certificate, to which the printed description, claims and drawings shall be annexed.

(2) The grant of the patent shall be recorded in the Patent Register (Section 54), and information shall be given thereof in the official journal of the Hungarian Patent Office (Section 56).

CHAPTER X

Other procedures in patent matters

Procedure for the declaration of lapse and for the restoration of patent protection Section 79

(1) The Hungarian Patent Office shall declare lapse of provisional patent protection under Section 38, paragraphs (b) and (c) and that of definitive patent protection under Section 39, paragraphs (b) and (c); it shall restore the patent protection under Section 40.

(2) The lapse of patent protection and the restoration of patent protection shall be entered in the Register of Patent Applications and the Patent Register, respectively (Section 54), and information shall be given thereof in the official journal of the Hungarian Patent Office (Section 56).

Revocation procedure Section 80

(1) Any person may start proceedings for the revocation of a patent against the patentee by virtue of Section 42.

(2) The application for revocation shall be filed with the Hungarian Patent Office with a copy for each patentee plus one additional copy. The application shall state the grounds on which it is based, and the documentary evidence shall be annexed.

(2) For the application for revocation a fee prescribed by special legislation shall be payable within two months from the filing of the application.

(4) If the application for revocation does not comply with the requirements laid down in this Law, the applicant shall be invited to correct the deficiencies; if the fee for the application has not been paid, the applicant shall be notified to correct within the time limit fixed by this Law. Failure to remedy the deficiencies shall result in the application for revocation being considered withdrawn.

Section 81

(1) The Hungarian Patent Office shall invite the patentee to make a statement on the application for revocation. Following the written preparatory work, it shall decide at a hearing on the revocation or limitation of the patent or on the refusal of the application.

(2) Several applications for revocation of the same patent shall be dealt with together.

(3) If the application for revocation has been withdrawn, the procedure may be continued *ex officio*.

(4) The losing party shall be obliged to cover the costs of the revocation procedure.

(5) The revocation or limitation of the patent shall be recorded in the Patent Register (Section 54), and information shall be given thereof in the official journal of the Hungarian Patent Office (Section 56).

Procedure for a decision on non-infringement Section 82

(1) The request for a decision on non-infringement (Section 37) shall be filed with the Hungarian Patent Office with a copy for each patentee plus one additional copy. The request shall contain the description and drawings of the product or process exploited or intended for exploitation, as well as the description and drawings of the patent indicated.

(2) A request for a decision on non-infringement may be filed only in respect of one patent.

(3) For the request for a decision on non-infringement a fee fixed by special legislation shall be payable within two months from the filing of the request.

(4) If the request for a decision on non-infringement does not comply with the requirements laid down in this Law, the requesting party shall be invited to correct the deficiencies; if the fee for the request has not been paid, that party shall be notified to correct within the time limit fixed by this Law. Failure to correct the deficiencies shall result in the request for a decision on non-infringement being considered withdrawn.

Section 83

(1) The Hungarian Patent Office shall invite the patentee to make a statement on the request for a decision on non-in-

fringement. Following the written preparatory work, it shall decide at a hearing whether the request shall be admitted or refused.

(2) The requesting party shall meet the costs of the procedure for a decision on non-infringement.

Interpretation of the patent description Section 84

In the case of a dispute concerning the interpretation of the patent description, the Hungarian Patent Office shall give an expert opinion at the request of the competent court or other authority.

PART III

COURT PROCEEDINGS IN PATENT CASES

CHAPTER XI

Review of decisions of the Hungarian Patent Office

Request for review Section 85

(1) Upon request, the court may review decisions on the merits of the Hungarian Patent Office (Section 46, paragraph 2), as well as its decisions declaring interruption of the procedure, suspending the procedure or furnishing a basis for the entries in the Register of Patent Applications or the Patent Register.

(2) Any party to procedures before the Hungarian Patent Office may request a review of the decision.

(3) The review of the decision on the revocation of a patent may be requested by the inventor of the service invention as well. The review of the decision on the grant and revocation of a patent may be requested by the public prosecutor by virtue of Section 6, paragraph 2.

(4) The request for review must be filed within thirty days from the date of notification, to the party or to the inventor of the service invention, of the decision.

(5) The request shall be filed with the Hungarian Patent Office which shall forward it, together with the documents of the patent case, to the court within fifteen days.

(6) With respect to the requirements of the request for review, the rules concerning complaints shall apply *mutatis mutandis*.

(7) In case of a late-filed request, the court shall decide on the request for *restitutio in integrum*.

Jurisdiction and competence Section 86

(1) In proceedings for the review of decisions of the Hungarian Patent Office, the Metropolitan Court shall have jurisdiction and exclusive competence.

(2) In appeals lodged against the decisions of the Metropolitan Court, the Supreme Court shall have jurisdiction.

Composition of the Court Section 87

The Metropolitan Court shall proceed in a chamber consisting of three professional judges, of whom two shall have technical university degrees or equivalent qualification.

Rules governing proceedings concerning requests for review Section 88

The court shall adjudicate on requests for the review of the decisions of the Hungarian Patent Office in accordance with the rules of non-contentious civil procedure, subject to the exceptions mentioned in this Law. Unless this Law or the non-contentious nature of the procedure indicates otherwise, the rules of the Code of Civil Procedure shall apply to the proceedings *mutatis mutandis*.

Publicity Section 89

The court may, at the request of a party, exclude the public from the hearing or from the pronouncing of the decision notwithstanding that the requirements prescribed in the general provisions of the Code of Civil Procedure are not fulfilled.

Incompatibility Section 90

(1) In addition to the cases determined in the general provisions of the Code of Civil Procedure, those excluded from participating in the proceedings or from acting as judge are persons who

(a) participated in taking the decision of the Hungarian Patent Office;

(b) are relatives, as stated in the general provisions of the Code of Civil Procedure relating to the incompatibility of judges, of a person mentioned under (a) above.

(2) The provisions of paragraph 1 shall also apply to the persons keeping records of evidence and to the experts.

Parties to, and other participants in, the proceedings Section 91

(1) The person who filed the request shall be a party to the court proceedings. The public prosecutor instituting proceedings shall be entitled to all the rights to which a party is entitled, however, he may not come to compromise, surrender or recognize rights.

(2) Where an adverse party has also taken part in the procedure before the Hungarian Patent Office, the court proceedings shall be initiated against him.

Section 92

Where a joint patentee acts independently to maintain and protect patent rights, or proceedings have been initiated only

against one of the joint patentees, the court shall notify the other joint patentees that they may enter the proceedings.

Section 93

- (1) Any person having a legal interest in the outcome of the proceedings for the review of the decisions of the Hungarian Patent Office may intervene in the proceedings, until the court decision becomes final, in favour of the party whose interests he shares.
- (2) Save for compromise, recognition and surrender of rights, the intervenor may take any action which the party he supports is entitled to take, however, his acts shall have effect only where they do not conflict with the acts of the party concerned.
- (3) Any legal dispute between the intervenor and the party concerned may not be decided in the course of the proceedings.

Representation Section 94

- (1) In the proceedings, patent attorneys may also act as representatives.
- (2) The power of attorney given to a patent attorney or an attorney-at-law shall only be valid if signed by the principal.

Costs of proceedings Section 95

- (1) Where an adverse party also takes part in the court proceedings, the provisions on litigation costs shall apply *mutatis mutandis* to the preliminary deposit and payment of the costs of proceedings.
- (2) In the absence of an adverse party, the applicant shall advance and meet the costs.
- (3) The expenses and fees of the patent attorney representing the party shall be added to the costs of proceedings.

Omission Section 96

Where neither the applicant nor any of the parties appear at the hearing, or where none of the parties meet the invitation of the court in the fixed time limit, the court shall decide on the request on the basis of the material at its disposal.

Restitutio in integrum Section 97

The provisions of Section 49 shall apply *mutatis mutandis* to the submission of a request for *restitutio in integrum* in non-contentious proceedings of the court.

Hearing and taking of evidence Section 98

- (1) The court of first instance shall take evidence and shall hold hearings in accordance with the provisions of the Code of Civil Procedure.

(2) If no adverse party takes part in the proceedings, and the case can be settled on the basis of documentary evidence, the court may take a decision without a hearing, but the party, on request, shall be heard.

(3) Should the court adjudge the case without a hearing but find during the proceedings that a hearing is necessary, it may at any time order such hearing. However, where the court adjudges the case at a hearing, or has ordered a hearing, it may not revoke this order and adjudge the case without a hearing.

(4) Compromise may not be reached in the court proceedings if such compromise was not possible in the procedure before the Hungarian Patent Office.

Decisions Section 99

The court shall decide both on the merits of a case and on other questions by decree.

Section 100

(1) If the court changes a decision taken in a patent case, the court decree shall replace the decision of the Hungarian Patent Office.

(2) The court shall repeal the decision and order the Hungarian Patent Office to start a new procedure if

(a) the decision was taken with the participation of a person, objectable on the grounds of incompatibility;

(b) important rules of procedure were infringed during the procedure before the Hungarian Patent Office which cannot be remedied by the court;

(c) the patent application has been rejected for formal reasons and the applicant remedies the insufficiencies simultaneously with filing the request for review or at the invitation of the court.

(3) Where a party requests a court decision on a question which was not subject of the procedure before the Hungarian Patent Office, the court shall refer the request to the Hungarian Patent Office. In this case the court shall, if necessary, repeal the decision of the Hungarian Patent Office.

(4) Where, after the filing of a request for review, the Hungarian Patent Office withdraws or repeals its decision not qualifying as taken on the merits, the court shall terminate the proceedings. If the Hungarian Patent Office has changed its decision, the court proceedings may only continue in respect of questions still pending.

Section 101

The court decree on the merits of a case shall be communicated by service.

Court proceedings at second instance Section 102

(1) The court of second instance shall decide on appeals lodged against decisions of the court of first instance in accordance with the provisions of the Code of Civil Procedure with the difference that it may also take evidence, at a hearing, on a small scale.

(2) The court of second instance shall decide on appeals at a hearing if an adverse party also takes part in the proceedings.

Exclusion of request for reconsideration
Section 103

No request for reconsideration is admissible in case of final court decisions on the amendment of the decisions of the Hungarian Patent Office.

CHAPTER XII

Patent litigation

Rules governing patent litigation
Section 104

- (1) In court proceedings concerning the grant, modification or cancellation of a compulsory license, the establishment of prior or further use, as well as concerning the infringement of an invention or a patent, the Metropolitan Court shall have jurisdiction and exclusive competence.
- (2) In these proceedings the chamber of the Metropolitan Court shall be composed as prescribed in Section 87.
- (3) In any other patent litigation not mentioned under paragraph 1, the county courts (or Metropolitan Court) shall proceed.
- (4) In the court proceedings referred to under paragraphs 1 and 3, the general provisions of the Code of Civil Procedure shall apply, with the differences laid down in Sections 89, 90, 94 and Section 95, paragraph 3 of this Law.

PART IV

*PATENT PROTECTION OF PLANT VARIETIES
AND ANIMAL BREEDS*

CHAPTER XIII

Provisions concerning plant varieties

Conditions of the patent protection of plant varieties
Section 105

- (1) A plant variety shall be patentable if it is distinguishable, uniform, stable and new and has been given a denomination apt for registration.
- (2) The variety shall be deemed to be distinguishable if it clearly differs by one or more morphological or other measurable characteristics from any other variety whose existence is a matter of common knowledge at the date of priority.
- (3) The variety shall be deemed to be uniform if the relevant characteristics of its individuals are identical.
- (4) The variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or at the end of cycles of propagation.
- (5) The variety shall be deemed to be new if it has not been offered for sale or marketed with the consent of the breeder or his successor in title:

(a) in the country earlier than one year before the date of priority,

(b) abroad earlier than four years or, in the case of trees and vines, earlier than six years before the date of priority.

(6) The denomination must, at the date of priority, be such that the variety may be identified. In particular, it may not consist solely of figures except where this is an established practice for designating varieties, it must not be liable to mislead, it must be different from the denomination of an existing variety of the same or closely related plant species and its use must not be contrary to public order or morality.

*Rights and obligations
deriving from patent protection of plant varieties*
Section 106

(1) A patent granted for a plant variety shall confer on the patentee the exclusive right to

(a) the production for the purposes of commercial marketing, the offering for sale or the marketing of the propagating material, as such, of the plant variety,

(b) the repeated use of the plant variety for the commercial production of another variety,

(c) the commercial use as propagating material of ornamental plants marketed for purposes other than propagation.

(2) Entire plants, seeds or other parts thereof apt for propagation shall be considered as propagating material.

(3) The propagating material of the patented plant variety may be exported only by the authorization of the patentee to a country in which the plant variety is not under a protection similar to that provided by this Law.

(4) Patent protection shall have a duration of fifteen years from the date of the grant of patent, and in the case of trees and vines, of eighteen years from the said date.

(5) The patentee shall be obliged to maintain the plant variety during the period of patent protection.

(6) Where a plant variety has been qualified by the State, the inventor shall be entitled, at the patentee's option, to a remuneration or to other compensation under the provisions on the State qualification of plant varieties.

*Substantive examination
of applications concerning plant varieties*
Section 107

(1) In any patent application, patent protection may only be sought for a single plant variety.

(2) The substantive examination of the application carried out by the Hungarian Patent Office shall reveal:

(a) whether the plant variety meets the requirements laid down in Section 105 and is not excluded from patent protection under Section 6, paragraph 2,

(b) whether the application complies with the requirements prescribed by this Law.

(3) The distinctness, uniformity and stability of the plant variety shall be assessed in the course of qualification by the State or on the basis of the results of experimental testing carried out for the purposes of patent procedure. The experimental testing shall be carried out in the territory of the country by an organization designated in special legislation.

(4) The result of experimental testing carried out by a competent foreign organization may be taken into consideration

in the patent procedure with the consent of such organization and in the case of reciprocity. In the question of reciprocity, the standpoint of the President of the Hungarian Patent Office shall be decisive. The Hungarian Patent Office shall notify the organization mentioned under paragraph 3 of the acceptance of the results of foreign testing.

(5) The expenses of the experimental testing shall be met by the applicant.

(6) The results of experimental testing may be filed by the applicant within four years following the date of priority.

*Revocation of patent granted
for a plant variety, cancellation of variety denomination*
Section 108

(1) The patent granted for a plant variety shall be revoked

(a) with retroactive effect to its establishment, if the plant variety was not distinguishable or new, or it was excluded from patent protection under Section 6, paragraph 2,

(b) with effect from the date at which the relevant decision has become final, if the patentee does not comply with the obligations provided for in Section 106, paragraph 5.

(2) The variety denomination shall be cancelled if it had not been apt for registration and another variety denomination shall be given.

Application of general provisions
Section 109

(1) The patented plant variety may be put into public production only after having been qualified by the State.

(2) In any other matters the provisions of Chapters I to XII shall apply *mutatis mutandis* to plant varieties and their patent protection.

CHAPTER XIV

Provisions concerning animal breeds

*Conditions of patent protection of animal breeds;
right to grant of patent*
Section 110

(1) An animal breed shall be patentable if it is distinguishable and new and has been given a denomination apt for registration. Where an animal breed does not fall within the scope of the law on livestock breeding, patentability shall also be subject to reproducibility of the animal breed.

(2) The animal breed shall be deemed distinguishable if it clearly differs in one or more value-measuring characteristics from any other breeds whose existence is a matter of common knowledge at the date of priority.

(3) The animal breed shall be deemed reproducible if its value-measuring characteristics remain unchanged through several generations.

(4) The animal breed shall be deemed new if it has not been offered for sale or marketed with the consent of the breeder or his successor in title earlier than one year before the date of priority.

(5) The denomination must, at the date of priority, enable the animal breed to be identified. In particular, it may not consist

solely of figures except where this is an established practice for designating breeds, it must not be liable to mislead, it must be different from the denomination of an existing breed of the same or closely related animal species and its use must not be contrary to public order or morality.

(6) In the case of State approved breeds the right to a patent shall belong to the person applying for approbation or to his successor in title.

*Rights and obligations
deriving from patent protection of animal breeds*
Section 111

(1) A patent granted for an animal breed shall confer on the patentee the exclusive right to

(a) the production for the purposes of commercial marketing, the offering for sale or the marketing of the propagating material, as such, of the animal breed,

(b) the repeated use of the animal breed for the commercial production of another breed.

(2) The animal itself (individual), sperms, ova, eggs apt for hatching, embryos, or any other biological units or parts influencing or controlling propagation (e.g. parts of genes, cells) shall be considered as propagating material.

(3) The propagating material of the patented animal breed may be exported only by the authorization of the patentee to a country in which the animal breed is not under a protection similar to that provided by this Law.

(4) Patent protection shall have a duration of twenty years from the date of filing of the application.

*Substantive examination
of applications concerning animal breeds*
Section 112

(1) In any patent application, patent protection may only be sought for a single animal breed.

(2) The substantive examination of the application carried out by the Hungarian Patent Office shall reveal:

(a) whether the animal breed meets the requirements laid down in Section 110, paragraphs 1 to 5 and is not excluded from patent protection under Section 6, paragraph 2,

(b) whether the application complies with the requirements prescribed by this Law.

(3) The distinctness and reproducibility of the animal breed shall be assessed in the course of State approbation or on the basis of the results of experimental productivity testing carried out for the purposes of patent procedure. The experimental testing shall be carried out in the territory of the country by an organization designated in special legislation.

(4) The result of experimental productivity testing carried out by a competent foreign organization may be taken into consideration in the patent procedure with the consent of such organization and in the case of reciprocity. In the question of reciprocity, the standpoint of the President of the Hungarian Patent Office shall be decisive. The Hungarian Patent Office shall notify the organization mentioned under paragraph 3 of the acceptance of the results of foreign testing.

(5) The results of experimental productivity testing may be filed by the applicant within four years following the date of priority.

(6) The expenses of the experimental productivity testing shall be met by the applicant.

*Revocation of patent granted for an animal breed,
cancellation of denomination*
Section 113

(1) The patent granted for an animal breed shall be revoked with retroactive effect to its establishment if the animal breed was not distinguishable or new, or it was excluded from patent protection under Section 6, paragraph 2.

(2) The denomination shall be cancelled if it had not been apt for registration and another denomination shall be given.

Application of general provisions
Section 114

(1) A patented animal breed not falling within the scope of the law on livestock breeding may be put into public production only after State approbation.

(2) In any other matters the provisions of Chapters I to XII shall apply *mutatis mutandis* to animal breeds and their patent protection.

PART V

FINAL PROVISIONS

CHAPTER XV

Entry into force; transitional provisions

*Rules establishing provisions concerning
of the entry into force
this Law and transitional provisions*
Section 115

(1) This Law shall enter into force on January 1, 1996; its provisions shall apply – with the exceptions set out in paragraphs 2 and 5 – only in procedures started after entry into force.

(2) The provisions of Section 49 shall apply *mutatis mutandis* to pending matters as well.

(3) Where the contract of remuneration or the patent license agreement was concluded or the service invention was utilized before the entry into force of this Law, the provisions valid at the time of the conclusion of the contract or utilization shall apply.

(4) To exploitation commenced before the entry into force of this Law the previously valid provisions shall apply with respect to the scope and limitations of patent protection and patent infringement.

(5) To the registration, maintenance, lapse and restoration of patents valid at the date of entry into force of this Law, the provisions of the Law shall apply with the difference that, with respect to the conditions of revocation of the patent, the provisions valid at the date of priority shall be decisive.

(6) Following the entry into force of this Law the National Office of Inventions shall continue to work under the name "Hungarian Patent Office". Any mention of the National Office of Inventions in legislation shall mean Hungarian Patent Office.

Repealed provisions
Section 116

Simultaneously with the entry into force of this Law, the following shall be repealed:

(a) Law No. II of 1969 on the Protection of Inventions by Patents, Decree Law No. 5 of 1983 amending it, Section 39 of Law No. XXXVIII of 1991, Section 3, paragraph 1 of Law No. IV of 1992, Section 23 of Law No. LXVIII of 1992 and Sections 1 to 6 of Law No. VII of 1994;

(b) Section 29, paragraph 4 and Section 34, paragraph 2 of Law No. XXXVIII of 1991 on Utility Model Protection;

(c) Decree No. 77/1989 (VII.10.) MT Concerning Remuneration to be Paid for Employees' Inventions and Certain Other Measures Related to Inventions;

(d) Joint Decree No. 4/1969 (XII.28.) OMFB-IM on the execution of Law No. II of 1969 on the Protection of Inventions by Patents, Decree No. 4/1983 (V.12.) IM amending it and Section 1 of Decree No. 11/1986 (IX.11.) IM;

(e) Decree No. 9/1969 (XII.28.) IM concerning Court Proceedings in Patent Matters.

Amended provisions
Section 117

Simultaneously with the entry into force of this Law

(a) in Section 3, paragraph 6 of Law No. IV of 1957 on the General Provisions on Administrative Procedure the words "and in industrial property matters" shall be added to the words "in revenue matters";

(b) the following provisions shall be substituted for Section 8 of Law No. XXXVIII of 1991 on Utility Model Protection:

"Section 8. To utility models created by persons working in employment or in civil service or by members of a co-operative working within the framework of a legal relationship of employment character, the provisions on service and dependent inventions shall apply *mutatis mutandis*.";

(c) the following provision shall be substituted for Section 37, paragraph 2 of the Law on Utility Model Protection:

"(2) Any person who took part as a party in the procedure before the Hungarian Patent Office may request that the decision be reviewed. The review of the decision on the revocation of utility model protection may be requested by the inventor of the employee utility model as well. The review of the decision on the grant and revocation of utility model protection may be requested by the public prosecutor by virtue of Section 6, paragraph 2."

Authorization
Section 118

(1) The Minister of Justice shall be authorized to establish by decree, in agreement with the President of the Hungarian Patent Office, the detailed formalities of patent applications.

(2) The Minister supervising the Hungarian Patent Office shall be authorized to establish by decree the detailed rules concerning the board of experts for inventions.