

Patent Law (Amendment No. 10) 5772-2012*

- Amendment of section 10
1. In the Patent Law 5727 1967¹ (hereinafter: the Principal Law) in section 10(a)(3) the term Convention State shall be replaced by "member state."
- Amendment of section 11
2. In section 11(a) of the Principal Law the words "and shall include" shall be replaced by "except for publication fees; the application shall include" and at the end the following shall be added: "in addition, a copy of the application shall be submitted to the Office on a device serving for the purpose of storing computer materials as instructed by the Registrar; for the purpose of this matter "computer materials" – within its meaning in the Computers Law 5755-1995²."
- Amendment of section 16
3. In section 16(a) of the Principal Law the words "the applicant's name" shall be replaced by "the applicant's name, application number."
- Addition of section 16A
4. After section 16 of the Principal Law the following shall be added:
- "Publishing a notice concerning opening of application files for public inspection
- 16A. (a) The Registrar shall publish a notice in the internet, as provided in section 166A, as shortly as possible after the determining date, containing a list of all the applications in respect of which all the relevant documentation shall be open for online public inspection from the publication date and thereafter (in this section – Notice); however, the Registrar shall not publish in the said Notice –
- (1) an application that was rejected or canceled before the determining date;
 - (2) an application whose acceptance was published in accordance with section 26 before the determining date.
- (b) Notwithstanding the said in subsection (a), the Notice for the purpose of any international application within its meaning in section 48A shall be published within 45

* Passed by the Knesset on 19 Tamuz 5772 (9 July 2012); the bill and explanatory notes were published in the State Records – 597 dated 25 Sivan 5771 (27 June 2011), p. 1250.

¹ Sefer Ha-Chukkim 5726, p.148; 5772, p.54.

² Sefer Ha-Chukkim 5755, p.366.

days from the date wherein the applicant satisfied the provisions set forth in section 48D.

(c) For the purpose of this section "determining date" – 18 months from the date the application was submitted to the Office, and, for the purpose of an application in respect of which priority is required – 18 months from the date of the earlier application within its meaning in section 10(a) or 18 months following the date of the earliest previous application as provided in section 10(b), as the case may be."

Amendment
of section 18

5. In section 18 of the Principal Law –

(1) The said in this section shall be marked as "(a)" and the final paragraph starting with the words "and to that end he may" shall be deleted;

(2) After subsection (a) the following shall be inserted:

"(b) For the purpose of satisfying the provisions set forth in subsection (a) –

(1) The examiner shall demand from the applicant to submit to him the documents specified in subsection (a)(1) and (2) and he may require the applicant to furnish him the documents specified in subsection (a)(3) and (4);

(2) the examiner may require the applicant to transmit the application for the search said in subsection (a)(5);

(3) The examiner may use the documents specified in subsection (a)(1) to (4) even if the documents were furnished to him by a person other than the applicant, and, for the purpose of subsection (a)(2) even if they were unknown to the applicant; the said documents shall be submitted by a person other than the applicant if two months from the date the applicant replied to the requirement in accordance with paragraph (1) have not passed yet."

Amendment
of section 18B

6. In section 18B of the Principal Law, instead of "section 18(5)" the following shall be inserted: "section 18(a)(5)."

Amendment
of section 19

7. In section 19 of the Principal Law, the number "26" shall be replaced by "16A" and at the end the following shall be inserted: "in accordance with section 16A or at the applicant's request – until after publication of the earlier application in accordance with section 26 or until rejection of the earlier application."

Amendment
of section
19A

8. After section 19 of the Principal Law the following shall be inserted:

"Bringing
forward
an
examination"

19A. (a) An applicant who presents reasonable arguments for that end may submit to the Registrar a reasoned application with an affidavit supporting the facts for the purpose of examining the application immediately; each of the following, *inter alia*, shall be deemed as reasonable argument:

(1) the advanced age of the applicant or his medical condition;

(2) A notice on behalf of the Registrar concerning the possibility to bring forward the examination due to a parallel examination under conditions and in states notified by the Registrar;

(3) Another person started exploiting the invention claimed in a patent application action, without obtaining the permission of the patent applicant or there are reasonable grounds to assume that he would act in that manner;

(4) The time that has passed since the application was submitted to the Authority in accordance with section 15 or from the date it entered the international stage in accordance with section 48D is unreasonably lengthy in comparison to the time that passed until other applications of the same kind were examined;

(5) The public interest;

(6) There are special circumstances justifying it.

(b) Where the applicant submitted an application for extension or delay in the examination of the patent application which he requested to examine immediately – the patent application shall be returned for examination according to the regular order unless the Registrar saw fit, for the purpose of extension, that the examination was required for reasons that the applicant or representative thereof have no control over or are not able to prevent.

(c) A person other than the applicant, who is not related to the applicant and does not act in the applicant's name may submit to the Registrar a reasoned application, with an affidavit

supporting the facts, for the purpose of examining immediately an application that was published in accordance with section 16A, upon fulfillment of one of the following:

(1) There is a substantial concern that examination of the patent application according to the order of submission shall cause the applicant for immediate examination of the application in accordance with this subsection, and who is engaged in inventions, to delay the development or production of a product or process subject matter of the patent application;

(2) The time that passed since the application was submitted to the Authority in accordance with section 15 or from the date it entered the international stage in accordance with section 48D is unreasonably lengthy, including unreasonably lengthy in comparison to the time that passed until other applications of the same kind were examined;

(3) The public interest;

(4) There are special circumstances justifying it

(d) An application as said in subsection (a) or (c) shall be submitted to the Office together with the fees set forth for that purpose, if any, and shall include the name of the person submitting the application and address for the purpose of service of documents in Israel.

(e) Where the Registrar saw that the conditions set forth in subsection (a) or (c) were satisfied, the examination shall be held as shortly as possible after the date in which the application for examination was submitted, subject to payment of the fees set for such examination as said, if any, on the condition that if the application is an international application that entered the international stage, examination shall not commence before 30 months from the date the application was submitted or from the date of the earlier application lapsed, if priority was required, upon the earlier; the application shall be examined at the earliest possible convenience.

(f) Notwithstanding the said in subsection (b) and section 164, upon examination of a patent application an application in respect whereof was submitted in accordance with subsection (c), the applicant shall not be granted the option to delay the examination, and no extensions shall be granted, unless the

Registrar sees that the extension is required for reasons over which the applicant or his representative have no control or are unable to prevent.

(g) Where an application that was examined in accordance with this section was accepted, its examination shall be noted by way of publication in accordance with section 26 and in the Register, and the date of conducting the examination and the date and number of application of the same kind that was examined shortly before the earlier examination in accordance with this section shall be noted, according to the classification customary in the Authority.

(h) The provisions set forth in this section shall not derogate from the powers vested to the Registrar or an examiner in accordance with section 19."

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| Amendment of section 26 | 9. | In section 26(b) of the Principal Law, paragraph (5) shall be deleted. |
| Repeal of section 27 | 10. | Section 27 of the Principal Law – repealed. |
| Amendment of section 164 | 11. | In section 164(a) of the Principal Law, after "in sections" the following shall be inserted: "18(b)(3) for the purpose of submitting documents by a person other than the applicant." |
| Amendment of section 165 | 12. | In section 165(a) of the Principal Law, instead of "18(a)(1)" the following shall be inserted: "18(a)(5)" and instead of "in accordance with section 26" the following shall be inserted: "in respect of which a notice pursuant to section 16A or section 26, upon the earlier." |
| Amendment of section 168 | 13. | In section 168A of the Principal Law, instead of "under section 26" the following shall be inserted: "in respect of which a notice pursuant to section 16A or section 26, upon the earlier." |
| Amendment of section 176 | 14. | In section 176 of the Principal Law, instead of "section 26" the following shall be inserted: "section 16A or 26, upon the earlier." |
| Amendment of section 179 | 15. | In section 179 of the Principal Law, instead of the final part starting with the words: "the Court" the following shall be inserted: "the Court – |

(1) shall grant compensation for exploitation of an invention that was performed after the publication date in accordance with section 16A and before the publication date in accordance with section 26; the said compensation shall be in the amount of reasonable royalties that the party in breach was required to pay if it had been granted a license to exploit the invention in the scope of the said exploitation, however no compensation shall be granted for exploitation of an invention as said unless the Court found that it constituted infringement of the patent as granted and on the

condition that the invention claimed in the patent is substantially identical to the invention that was claimed in the application published in accordance with section 16A;

(2) shall grant a remedy for infringement that was committed after the publication date under section 26."

Application,
commencement
and transitional
provisions

16. (a) Section 19A of the Principal Law, according to its wording in section 8 in this Law, shall be six months following the publication date of this Law.

(b) The provisions set forth in this Law shall also apply to patent applications that were submitted and not yet accepted before the publication date of this Law (hereinafter: Commencement Date), however for the purpose of applications as said the determining date in respect of which lapsed before the Commencement Date and for the purpose of international applications publication date in respect of which in accordance with section 16A(b), within its wording in section 4 of this Law lapsed before the Commencement Date, the Patents Registrar shall publish the notice in the internet as provided in section 166A of the Principal Law one month following the Commencement Date, however no later than 12 months following the Commencement Date, provided that no more than 4,500 applications are published in each month; in this section, "the determining date" – within its meaning in section 16a(c) of the Principal Law, within its wording in section 4 of this Law.

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