



PATENT ACT

no. 17/1991 with amendments no. 67/1993

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EINKALEYFASTOFAN

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Act no. 17/1991 with amendments no. 67/1993

Patents Act

The holders of the powers of the President of Iceland according to Article 8 of the Constitution the Prime Minister, the Speaker of the United Althing, and the President of the Supreme Court,

make known: The Althing has passed this Act, and we have confirmed it by our approval:

PART I

General Provisions

Section 1

Any person who has made an invention which is susceptible of industrial application, or that person's successor in title, may, upon application, obtain a patent which gives the holder the exclusive right to exploit the invention commercially.

The principal innovations which are not considered to be inventions are those which concern exclusively:

1. a discovery, scientific theory or mathematical method;

2. an aesthetic creation;
3. a scheme, rule or method for performing mental acts, for playing games or for doing business, or a programs for a computer;
4. the presentation of information

Methods for surgical or therapeutic or diagnostic methods practiced on humans or animals shall also not be regarded as inventions. This provision does not, however, prevent the granting of patents for products and equipment, including for substances and compositions of substances, for use in methods of this type.

A patent shall not be granted for:

1. inventions the use of which would be contrary to morality or public order;
2. plant or animal varieties or essentially biological processes for the production of plants or animals; patents may however be granted for microbiological processes and products resulting from such processes.

Section 2

Patents may only be granted for inventions which are new in relation to what was known before the filing date of the patent application and which also differ essentially therefrom.

Everything made available to the public in writing, in lectures, by public use or otherwise shall be considered as known. Also the contents of a patent application filed in this country before said filing date shall be considered as known if that application becomes available to the public pursuant to Section 22. The condition in the first paragraph that the invention must differ essentially from what was known before the filing date of the patent application does not, however, apply in respect of the contents of such applications.

Applications, which are discussed in Part III, shall in certain cases have the same effect in this country as is discussed in Paragraph 2, cf. Sections 29 and 38.

The stipulation in Paragraph 1 that the invention shall be new does not prevent the granting of a patent for a known substance or a known composition of substances for use in a method referred to in Paragraph 3, Section 1, provided the use of the substance or composition is not known in methods of this type.

A patent may be granted despite the fact that the invention was made available to the public within six months prior to the filing of the application,

1. in consequence of evident abuse in relation to the applicant or his predecessor in title; or
2. because the invention was displayed by the applicant or his predecessor in title at an official, or officially organized exhibition falling within the terms of the Convention on International Exhibitions signed at Paris on November 22, 1928.

Section 3

The exclusive right conferred by a patent implies that no person except the proprietor of the patent may, without the proprietor's consent, use the invention by:

1. making, offering for sale, putting on the market, or using products or equipment protected by the patent, or importing or possessing such items for these purposes;
2. using a process which is protected by the patent or, while knowing, or it being obvious from the circumstances, that the use of the process is prohibited without the consent of the proprietor of the patent, offering the process for use in this country;
3. offering, putting on the market, or using products made by a process protected by the patent or importing or possessing the product for these purposes.

The exclusive right also implies that no person other than the proprietor of the patent may, without his consent, exploit the invention by offering or supplying a person who is not entitled to exploit the invention with such means for carrying out the invention in this country which relate to an essential element of the invention, if the person offering or supplying the means knows, or it is obvious from the circumstances, that said means are suited and intended for use in carrying out the invention. If the means are a staple commercial product, this paragraph only applies if the person offering or supplying the means attempts to induce the receiver to commit acts referred to in the first Paragraph. In applying the provisions of sentences 1 and 2 of

this paragraph persons using the invention in a manner specified in Paragraph 3, Points 1, 3 and 4, shall not be considered as entitled to exploit the invention.

The following are excepted from the exclusive right:

1. use which is not commercial;
2. use of the product protected by the patent which is put on the market [within the European Economic Area]¹⁾ by the proprietor of the patent or with his consent;
3. use of the invention for experiments which relate to the invention itself;
4. preparation in a pharmacy of a medicine in accordance with a physician's prescription in individual cases or acts with the medicine so prepared.

Section 4

Any person who, at the time when the application for a patent was filed, was using the invention commercially in this country may, notwithstanding the patent, continue such use while retaining its general character, provided the use does not constitute evident abuse in relation to the applicant or his predecessor in title. Such right of use shall also be due on corresponding conditions to any person who had made substantial preparations for commercial use of the invention in this country.

The right according to the preceding paragraph can only be transferred to others together with the business in which it originated or in which the use was intended to take place.

Section 5

Notwithstanding the grant of a patent, an invention may be utilized on a foreign vehicle, vessel or aircraft when such a means of transport is in this country temporarily or by chance.

The Minister of Industry may decree that, notwithstanding the grant of a patent, spare parts and other accessories for aircraft may be imported into this country and used here for repair of aircraft of a foreign country in which corresponding privileges are granted to Icelandic aircraft.

Section 6

An application for a patent which the applicant or his predecessor in title have within the 12 months prior to the filing date disclosed in another application for a patent in this country or for a patent, inventor's certificate or utility model protection in another country adhering to the Paris Convention for the Protection of Industrial Property of March 20, 1883, shall, when applying Paragraphs 1, 2 and 4 of Section 2 and Section 4, be deemed to have been filed simultaneously with the earlier application if the applicant so demands. Such a priority may also be enjoyed from an application for protection which does not relate to a country adhering to the Paris Charter, if Icelandic patent applications are granted corresponding rights and if legislation in the country in question corresponds essentially with the Charter.

The Ministry of Industry determines and stipulates the conditions for granting of such priority.

PART II

The Patent Application and its Processing

Section 7

This Act comes within the authority of the Ministry of Industry which controls a Patent and Registration office. The Patent Authority in this Act refers to this Office unless otherwise stated.

The Minister of Industry appoints a committee of appeal which rules on cases which are sent to appeal and which concern the Patent Authority, cf. Sections 25 and 67 of this Act. The committee is described in detail in the regulations accompanying this Act.

¹⁾ Act no. 67/1993, Sect. 1 (valid from January 1 1994)

Section 8

An application for a patent must be made in writing and filed with the Patent Authority, or in the case referred to in Part III, with a patent authority in a foreign country or with an international organization.

The application shall contain a description of the invention, also comprising drawings if such are necessary, and a distinct statement of what is sought to be protected by the patent (patent claims). The description shall be so clear as to enable a person skilled in the art to carry out the invention with the guidance thereof. If an invention relates to a microbiological process or product made with such a process, such an invention will not be considered sufficiently disclosed unless the requirements in Paragraph 6 are fulfilled.

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

The name of the inventor shall be stated in the application. If a patent is applied for by someone other than the inventor, the applicant shall prove his title to the invention.

The applicant shall pay a prescribed application fee. For the application, a prescribed annual fee shall also be paid for each fee year beginning before the application is finally decided on. A fee year according to this Act is 12 months and shall be counted the first time from the day on which the application was filed, and thereafter from the corresponding day according the calendar.

If in the carrying out of an invention, a microorganism is to be used which is neither available to the public nor can be described in the application documents so as to enable a person skilled in the art to carry out the invention with the guidance thereof, a culture of the organism shall be deposited no later than the date of filing of the application. The culture shall thereafter be continuously on deposit so that a person entitled under this Act to receive samples from the culture can receive a sample in this country. Regulations shall specify where deposits may be made.

If a deposited culture ceases to be viable or if samples from the culture cannot be supplied for other reasons, it may be replaced by a new culture of the same organism within the time period and otherwise in the manner prescribed by the provisions of the regulations. If this has been done, the new deposit shall be considered as having been made on the day when the earlier deposit was made.

Section 9

If the applicant so demands and pays the special fee, the Patent Authority under those conditions detailed in the regulations, shall allow the application to become subject to such novelty search by an International Searching Authority as referred to in Article 15(5) of the Patent Cooperation Treaty agreed at Washington on June 19, 1970.

Section 10

Patents for two or more mutually independent inventions may not be applied for in a single application.

Section 11

If a patent is sought for an invention disclosed in a patent application filed earlier by the applicant and not finally decided upon, the later application shall, on conditions laid down in the regulations, be regarded as filed at the time when the documents disclosing the invention were filed with the Patent Authority, if the applicant so demands.

Section 12

An applicant who is not domiciled in this country shall have an agent residing here who shall be entitled to represent him in all matters concerning the application.

Section 13

The application for a patent must not be amended so as to claim protection for subject matter which did not appear in the application at the time when it was filed, or shall be considered to have been filed pursuant to Section 14.

Section 14

If the applicant amends the application within six months from the date of filing, the application shall be considered to have been filed at the time when the amendment was made, if the applicant so requests.

A request under Paragraph 1 must be made within two years from the date of filing of the application. Such a request may be made only once and may not be withdrawn.

Section 15

If the applicant has not complied with the requirements regarding the application, or if the Patent Authority finds other obstacles to the allowance of the application, the applicant shall be notified thereof and be requested within a specified term to explain his case or make corrections to the application. The Patent Authority may, however, without consulting the applicant, make such changes in the abstract as it deems necessary.

If the applicant fails, within the stipulated term, to render a statement or to take measures to overcome the objections raised, the application shall be dismissed. Notice of this shall be given in accordance with Paragraph 1.

A dismissed application will be reinstated if, within four months from the expiration of the specified term, the applicant submits a statement or takes measures to overcome the objections and, within the same term, pays the prescribed resuming fee.

If renewal fees according to Sections 8, 41 and 42 are not paid, the application shall be dismissed without further notification. Applications which have been dismissed on these grounds shall not be reinstated

Section 16

If, after having received the applicant's statement, the Patent Authority still has objections to the allowance of the application, and the applicant has had an opportunity to submit a statement on the objections, the application shall be refused, unless there are found reasons to give the applicant another opportunity to state his case or amend his application according to Paragraph 1, Section 15.

Section 17

If a person claims before the Patent Authority that the proper title to the invention rests with him and not with the applicant, and if the case is deemed uncertain, the Patent Authority may invite him to bring an action before a court of law within a certain time. If the invitation is not complied with, the Patent Authority may disregard the claim in deciding on the patent application. Information to that effect shall be given in the invitation.

If litigation regarding the proper title to the invention is pending before the court, the patent application may be declared in abeyance until the litigation is finally settled by the court.

Section 18

If a person proves that the proper title to the invention rests with him and not with the applicant, the Patent Authority shall transfer the application to him, if he so requests. The transferee shall pay a new application fee.

If a request for transfer has been made under Paragraph 1, the application may not be dismissed, rejected or allowed until the request has been finally decided upon.

Section 19

If the application is in accordance with regulations and directives and no obstacles to the grant of a patent are found, the application shall be allowed for publication pursuant to Section 21.

After the application has been allowed for publication, no request under Section 14 may be made nor may the patent claims be amended so that the extent of patent protection is broadened.

Section 20

Within two months after the application has been allowed for publication, the applicant shall pay the prescribed publication fee. In default thereof, the application shall be dismissed. The processing of a dismissed application shall be resumed if within four months after the expiration of the said period of time the applicant pays the publication fee and the prescribed resuming fee.

If a patent is applied for by the inventor and if, within the time specified in the first sentence of Paragraph 1 the application has been allowed for publication, he requests exemption from payment of the publication fee, the Patent Authority may grant him such exemption if he has considerable difficulties in paying the fee. If the request is rejected, a fee paid within two months thereafter shall be considered to have been paid within the proper time limit.

Section 21

When the publication fee pursuant to Section 20 has been paid, or exemption from the publication fee has been granted, the Patent Authority shall lay the application open to public inspection in order to afford the public an opportunity to file an opposition against the application. The publication shall be advertised.

An opposition shall be made in writing and be filed with the Patent Authority within three months from the date of the announcement.

From the day when the application is published, printed copies of the description, patent claims and abstract, with information on the applicant and the inventor, shall be obtainable at the Patent Authority.

Section 22

As from the date when the application is laid open to public inspection, the documents in the case shall be available to any person.

When 18 months have elapsed from the date of filing, or from the day when priority is claimed, cf. Section 6, the documents shall be available to the public, even if the application has not been laid open to public inspection. If a decision has been made to shelve or to refuse the application, the files shall, however, not be available unless the applicant requests resumption of the proceedings, appeals against the refusal or requests re-establishment of rights under Sections 72 or 73.

At the request of the applicant the files of the application shall be made available earlier than prescribed in Paragraphs 1 and 2.

When the files are made available under Paragraphs 2 or 3, a notice to that effect shall be published.

If a document contains business secrets which do not concern an invention which has been the subject of a patent application, the Patent Authority may, on request and in special circumstances, decide that the document shall not be available or only available in part. If such a request has been filed, the document shall not be made available until a decision has been made or until the period within which the decision may be appealed against has passed. An appeal shall have the effect of suspending the implementation of any decision.

If a culture of a microorganism has been deposited under section 8, any person shall have the right to obtain a sample of the culture when the files become available under Paragraphs 1, 2 or 3. This does not imply that any sample shall be furnished to a person who, according to rules laid down in or pursuant to law, is not allowed to handle the deposited microorganism. Nor shall any sample be furnished to any person if, due to the dangerous properties of the organism, his handling of the sample is considered to involve obvious danger.

Notwithstanding Paragraph 6 the applicant may request that until the application has been laid open to public inspection or has been finally decided upon without having been laid open to public inspection, the furnishing of a sample shall only be effected to a expert in the art. The Minister of Industry shall lay down provisions governing the time limit for the submission of such a request and prescribing who may be considered an expert in this context.

The request for the furnishing of a sample shall be filed in writing with the Patent Authority and shall contain a declaration of observance of the restriction on the use of the sample in accordance with the rules

laid down by the Minister of Industry. If the sample is to be furnished to an expert in the art then he shall make the declaration rather than the person requesting the sample.

Section 23

After the expiry of the time limit prescribed in Paragraph 2, Section 21, the proceedings for grant shall be resumed. In these proceedings the provisions of Sections 15, 16, 17 and 18 shall apply *mutatis mutandis*.

If an opposition has been filed, the applicant shall be notified accordingly and be given an opportunity to file his observations on the opposition.

Section 24

An appeal against the final decision of the Patent Office concerning a patent application may be filed by the applicant or, if the application has been accepted despite a duly filed opposition, by the opponent. If the latter withdraws his appeal, such appeal may nevertheless be examined when circumstances make it desirable.

Decisions rejecting a request for resumption under Paragraph 3, Section 15 or Paragraph 1, Section 20 or complying with a request for transfer under Section 18 may be appealed against by the applicant. Decisions rejecting a request for the transfer of the application may be appealed against by the person making the request.

Decisions rejecting a request under Paragraphs 5 and 8, Section 22 may be appealed against by the person making the request.

Section 25

Appeals against decisions concerning patent applications shall be filed with the Patent Board of Appeals not later than two months after the date on which the party concerned was notified of the decision by the Patent Office. The prescribed fee shall be paid within the same time limit. Failure to pay shall result in rejection of the appeal as inadmissible.

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

Proceedings for the trial of decisions of the Patent Office which may be appealed against to the Patent Board of Appeal may not be brought before the courts until the decision of the Patent Board of Appeal has been given, cf., however, Sections 52 and 53. Proceedings for the trial of decisions by which the Patent Board of Appeal refuses an application for the patent shall be brought within two months after the date on which the party concerned was notified of the decision.

The provisions of Paragraph 5, Section 22 shall also apply with respect to documents received by the Patent Board of Appeal.

Section 26

A patent has been granted when the patent application has been finally accepted. When a patent has been granted, the grant shall be advertised, and a patent certificate shall be issued. If the description or the claims have been amended as compared with the copies referred to in Paragraph 3, Section 21, printed copies of the patent in its final form shall be obtainable from the Patent Authority stating the names of the patent holder and the inventor. If an application which is available to the public is finally refused or shelved, the refusal or shelving shall be advertised.

Section 27

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

PART III International Applications

Section 28

An “international application” means an application under the Patent Cooperation Treaty done at Washington on June 19, 1970.

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

The provisions of Sections 29 to 38 shall apply to international applications designating Iceland.

Section 29

An international application which has been accorded an international filing date by the receiving Office shall have the same effect as a patent application filed in this country on that date. The provisions of the second sentence, Paragraph 2, Section 2 shall, however, only apply if the application has been proceeded with according to the provisions of Section 31.

Section 30

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

Section 31

If the applicant wishes to proceed with an international application with respect to Iceland, he shall within 20 months from the international date of filing, or if priority is claimed, from the priority date pay the prescribed fee to the Patent Authority and file a translation into Icelandic of the international application to the extent prescribed by the Minister of Industry or, if the application is written in Icelandic, a copy of the application.

If the applicant requests that an international application be the subject of an international preliminary examination, and if within 19 months from the date referred to in Paragraph 1 he declares in accordance with the Treaty that he intends to use the results of that examination in Iceland, he shall comply with the requirements of Paragraph 1 within 30 months from the said date.

If the applicant has paid the prescribed fee within the time limits fixed in Paragraphs 1 and 2, the prescribed translation or copy may be filed within a further period of two months, provided that a prescribed additional fee is paid prior to the expiry of the further period.

If the applicant fails to fulfill the requirements of this Section, the application shall be considered withdrawn as far as Iceland is concerned.

Section 32

If the applicant withdraws a demand for international preliminary examination or his declaration that he will use the results of such examination for patent application in Iceland, the international application shall be considered withdrawn as far as Iceland is concerned unless the withdrawal has been effected prior to the expiry of the time limit applicable under Paragraph 1, Section 31 and the applicant proceeds with the application prior to the expiry of the time limits prescribed in Paragraph 1, Section 31, cf. Paragraph 3 of the same Section.

Section 33

When an international application has been proceeded with under the provisions of Section 31, the provisions of Part II of this Act shall apply to the application and other processing thereof with the exception

of any stipulations detailed in this Section or in Sections 34 to 37. The application may only be processed after the lapse of the time limits stipulated in Paragraphs 1 and 2, Section 31, unless the applicant requests otherwise.

The provisions of Section 12 shall only be applicable from the time when the Patent Authority may commence processing the application.

The provisions of Section 22 shall apply even before the application has been proceeded with when the applicant has complied with his obligation under Section 31 to file a translation of the application or, if the application is written in Icelandic, when the applicant has filed a copy thereof with the Patent Authority.

In relation to the provisions of Sections 48, 56 and 60 an application shall be deemed to have been made public when it has been made available under the provisions of Paragraph 3. If the application complies with the requirements relating to form and contents provided for in the Treaty, it shall be accepted in that respect.

Section 34

An international application shall only be accepted for laying open to public inspection or refused after the expiry of a time limit prescribed by regulations, unless the applicant has consented to the application being decided upon prior thereto.

Section 35

Without the consent of the applicant an international application shall not be laid open to public inspection or published in printed form by the Patent Authority prior to its publication by the International Bureau of the World Intellectual Property Organization (WIPO) or prior to the expiry of 20 months from the international filing date or, if priority is claimed, from the priority date.

Section 36

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

The applicant may appeal against a decision under Paragraph 1 by which an application is found to relate to two or more mutually independent inventions. The provisions of Paragraphs 1 to 3 of Section 25 shall apply in this case.

If the decision of the Patent Authority is confirmed the time limit for payment of the fee under sentence 2 of Paragraph 1 shall be from the date that the final decision is given.

Section 37

If any part of an international application has not been the subject of an international preliminary examination because the applicant has restricted the claims at the invitation of the International Preliminary Examining Authority, that part of the application shall be considered withdrawn before the Patent Authority unless the applicant pays the prescribed fee within two months after the date on which the Patent Authority invited him to pay with reference to the restriction of the examination carried out.

Section 38

If a receiving Office has refused to accord an international filing date to an international application, or if it has decided that the application or the designation of Iceland shall be considered withdrawn, the Patent Authority shall, at the request of the applicant, review the decision to determine whether it was justified. The same shall apply if the International Bureau deems a patent application to be withdrawn.

A request for a review under Paragraph 1 shall be presented to the International Bureau prior to the expiry date prescribed by regulations. The applicant shall, prior to the expiry of the same time limit and to the extent prescribed by regulations, file a translation of the application with the Patent Authority and pay the prescribed application fee.

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

The provisions of sentence 2, Paragraph 2, Section 2 shall apply to applications processed according to Paragraph 3, provided that the application is made available to the public under Section 22.

PART IV Extent of Protection and Term of the Patent

Section 39

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

Section 40

A granted patent may be maintained until 20 years have elapsed from the date of filing of the patent application. A renewal fee shall be paid for the patent in respect of each fee year beginning after the grant of the patent. If a patent is granted before the renewal fee for the application is due, cf. provisions of Section 41, the proprietor of the patent shall in addition, when the first renewal fee for the patent is due, pay the renewal fees for those fee years which had begun before the granting of the patent.

PART V Payment of Renewal Fees

Section 41

The renewal fee shall fall due on the last day of the month in which the fee year begins. The renewal fees in respect of the first two fee years shall, however, only fall due at the same time as the fee in respect of the third fee year. Renewal fees may be paid a maximum of three months before the due date. If the decision of the Patent Board of Appeal to reject an application is reversed by a court, the renewal fee for the fee years beginning after the decision of the Patent Board of Appeal is made and extending until the court ruling comes into effect, may not fall due earlier than two months after the latter date.

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

Any renewal fee may, together with the prescribed additional fee, be paid within six months after its due date.

Section 42

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

If a request for a respite or a prolongation of a respite is rejected, payment within two months thereafter shall be regarded as payment in due time.

Any renewal fee for the payment of which a respite has been granted according to Paragraph 1 may, together with the same additional fee as referred to in Paragraph 3, Section 41, be paid within six months after the date until which the respite has been granted.

PART VI Licensing, Transfer, etc.

Section 43

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

Section 44

The transfer of a patent or the grant of a license shall on request be recorded in the Register of Patents. If it is proved that a registered license has terminated, the license shall be deleted from the Register.

The provisions of Paragraphs 1 and 2 shall also apply to compulsory licenses and rights under Paragraph 2, Section 53.

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

Section 45

If a patented invention is not worked to a reasonable extent in this country when three years have elapsed from the grant of the patent and four years have elapsed from the filing of the patent application, any person wishing to work the invention in this country may obtain a compulsory license to do so unless there are shown legitimate reasons for the failure to work the invention.

Subject to reciprocity the Minister of Industry may direct that, for the purposes of Paragraph 1, working of the invention in another country shall be equivalent to working in this country.

Section 46

The proprietor of a patent for an invention, the exploitation of which is dependent on a patent held by another person, may obtain a compulsory license to exploit the invention protected by the latter patent if it is deemed to be reasonable in view of the importance of the former invention or for other special reasons.

In the event of a compulsory license being granted to exploit a patented invention in pursuance of Paragraph 1, the proprietor of that invention may also obtain a compulsory license to exploit the other invention unless special circumstances make this undesirable.

Section 47

When required by important public interests, any person who wishes to exploit an invention commercially for which another person holds a patent may obtain a compulsory license to do so.

Section 48

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

A compulsory license in accordance with Paragraph 1 may include the time preceding the grant of the patent.

Section 49

A compulsory license may only be granted to a person who may be presumed to be able to exploit the invention in a reasonable and acceptable way and in accordance with the terms of the license.

A compulsory license shall not prevent the proprietor of the patent from exploiting the invention himself or from granting licenses to others. The compulsory license may only be transferred to others together with the business in which it is exploited or in which the exploitation was intended.

Section 50

The Reykjavik City Court shall decide whether a compulsory license shall be granted, to what extent the invention may be exploited, the amount of the compensation to be paid to the proprietor and other terms of the compulsory license. If circumstances should change significantly, the Court may, at the request of either party, cancel the license or lay down new terms of the license.

PART VII Termination of the Patent etc.

Section 51

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

Section 52

A patent may be revoked by a court decision if:

1. it has been granted notwithstanding that requirements under Sections 1 and 2 are not complied with;
2. it relates to an invention which is not disclosed in a manner sufficiently clear to enable a person skilled in the art to carry out the invention;
3. its subject matter extends beyond the content of the application as filed; or
4. it has been granted notwithstanding that the protection conferred by the patent has been extended after the acceptance of the application for publication.

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

With the exceptions provided for in Paragraph 4, proceedings may be instituted by any person.

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

Section 53

If a patent has been granted to a person other than the one entitled thereto under Section 1, the court shall transfer the patent to the entitled person if he so claims. The provisions of Paragraph 4, Section 52 concerning the time of instituting the proceedings shall apply.

The person who is deprived of the patent shall, if he in good faith is exploiting the invention commercially in this country or has made substantial preparations for such exploitation, be entitled, for a reasonable compensation and on reasonable conditions in other respects, to continue the exploitation already commenced or to commence the planned exploitation within the same limits. Holders of registered licenses shall also enjoy the same right on the same conditions.

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

Section 54

If a proprietor of a patent surrenders the patent in writing to the Patent Authority, the Patent Authority shall declare the patent to have ceased to have effect.

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

Section 55

When a patent has lapsed or has been declared to have ceased to have effect or has been revoked or transferred to another person by a final court decision, the Patent Authority shall publish a notice to that effect.

PART VIII Obligation to Give Information About Patents

Section 56

An applicant for a patent who invokes his patent application against another person before the files of the application have become available to the public shall be under an obligation, on request, to consent to permitting the said person to obtain inspection of the files of the application. If the application comprises a deposited culture of a micro-organism as referred to in Section 8, the said person shall also have the right to obtain a sample of the culture. The provisions of sentences 2 and 3, Paragraph 6, Section 22, as well as Paragraphs 7 and 8 of the same Section apply in those cases.

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

PART IX Liability to Punishments, Liability for Damages, etc.

Section 57

Any person who intentionally infringes the exclusive right conferred by a patent shall be punished by fine, or under aggravated circumstances, by imprisonment of up to three months.

If the offence is committed by a society or other company the enterprise may be liable to a fine.

Proceedings shall be brought by the injured party.

Section 58

Any person who intentionally or negligently infringes a patent shall be liable to pay a reasonable compensation for the exploitation of the invention as well as damages for the further injury which the infringement may have caused.

If any person infringes a patent and such infringement is not intentional or due to negligence, he shall be liable to pay compensation and damages under the provisions of Paragraph 1 if and to the extent it is found reasonable.

Section 59

In the case of patent infringement the court may, to the extent it is found reasonable and when so demanded, order measures to prevent the abuse of products manufactured in accordance with the patent invention or of any apparatus, tool or other article the use of which would involve patent infringement. It may thus be decided that the article shall be altered in a specified manner or destroyed or, in the case of a patented article, that it shall be surrendered to the injured party in return for compensation. This shall not, however, apply to any person who in good faith has acquired the said article or has acquired rights in respect of the article and who has not himself committed patent infringement.

Under very special circumstances the court may, notwithstanding the provisions of Paragraph 1, and when so claimed, grant the owner of the products, apparatus, tools and other articles, referred to in Paragraph 1 permission to dispose of these freely during the term of the patent or part of that term in return for a reasonable compensation and on reasonable conditions in other respects.

Section 60

If any person exploits an invention without permission after the files of the application have been made available to the public, and the application results in a patent, the provisions concerning patent infringement, with the exception of the provisions of Section 57, shall apply *mutatis mutandis*. The protection conferred prior to the advertisement of publication under Section 21 shall, however, only extend to subject matter disclosed both in the claims as worded at the time when the application was made available to the public and in claims of the patent.

The person concerned shall only be liable to the extent referred to in Paragraph 2, Section 58 to pay damages for injury caused by infringement committed prior to the advertisement of the publication of the application under Section 21.

Section 61

In proceedings for patent infringement the invalidity of the patent may only be put in issue if a claim for revocation is brought against the proprietor of the patent in the event that the latter has been summoned under the rules laid down in Paragraph 4, Section 63. If the patent is revoked, the provisions of Sections 57 to 60 shall not apply.

Section 62

Any person who fails to fulfill his obligations according to Section 56 or gives false information shall be punished by a fine, provided that a more severe punishment is not provided for by other legislation. He shall also compensate for the injury caused by his action to the extent that is considered reasonable.

The provisions of Paragraphs 2 and 3, Section 57 shall also apply in such cases.

Section 63

Any person who institutes proceedings for the revocation of a patent, for the transfer of a patent or for the grant of a compulsory license shall at the same time notify the Patent Authority accordingly and by registered mail notify any licensee who is entered in the Register of Patents and whose address is recorded in that Register of the proceedings. Any licensee who wishes to institute proceedings for patent infringement

shall in a similar way notify the proprietor of the patent of the proceedings, provided that the latter's address is recorded in the Register.

If the plaintiff does not prove on the day on which the case comes up for trial that notification under Paragraph 1 has been effected, the court may fix a time limit for compliance with the requirements of Paragraph 1. If the said time limit is not observed, the case shall be dismissed.

If the proprietor of a patent brings proceedings for infringement of patent and the defendant wishes to claim revocation of the patent the latter shall, in accordance with the provisions of Paragraph 1, inform the Patent Authority and registered licensees that he intends to claim revocation. The provisions of Paragraph 2 shall also apply here so that the claim for revocation shall be dismissed if the time limit which has been fixed is not observed.

In proceedings for patent infringement brought by a licensee, the defendant may summon the proprietor of the patent to attend without regard to his domicile in order to claim against him that the patent be revoked.

Section 64

The following proceedings shall be brought in the Reykjavik City Court:

1. proceedings concerning the right to an invention which is the subject matter of an application for a patent;
2. proceedings concerning the grant of a patent, cf. Paragraph 3, Section 25;
3. proceedings for the revocation of a patent or for the transfer of a patent, cf. Sections 52 and 53 and proceedings concerning rights under Paragraph 2, Section 53;
4. proceedings concerning rights under Section 4 and Paragraph 2, Section 74;
5. proceedings concerning patent infringement;
6. proceedings for the assignment of a patent and proceedings regarding voluntary licenses.

Applicants and proprietors of patents who are not residents in this country shall be deemed, according to this Act, to have their domicile in Reykjavik.

Section 65

Office copies of court decisions in the cases referred to Section 50 and Paragraph 1, Section 64 shall be communicated to the Patent Authority on the initiative of the judge.

PART X Miscellaneous Provisions

Section 66

A proprietor of a patent who is not resident in this country shall have an agent residing in this country and recorded in the Register of Patents. The agent is empowered on behalf of the proprietor of a patent to receive summonses and other notifications concerning the patent.

If a proprietor of a patent does not have such an agent, summonses shall be effected in the manner prescribed in legislation on civil proceedings in district courts. In addition the registered proprietor of a patent shall be sent a copy of the summons by registered mail. The same applies to other notices concerning the patent.

The Minister of Industry may direct that the rules under Paragraph 1 do not apply in relation to a proprietor of a patent who is resident in another country, if proprietors of patents resident in this country enjoy the same rights in the foreign country concerned. The same applies if a proprietor of a patent has an agent who is resident in the country in question and if this agent is recorded in the Register of Patents in this country as agent with powers to receive summonses and other notifications.

Section 67

An applicant or proprietor of a patent may appeal against the final decisions of the Patent Office in addition to those referred to in Section 24 not later than two months after the date on which he was notified of the decision. The same shall apply for decisions in pursuance of Section 42 or Paragraphs 1 and 2, Section 72 and Section 73. Other parties interested in the said decision may file a similar appeal not later than two months after the advertisement of the decision.

The fee prescribed for the appeal shall be paid within the time limit referred to in Paragraph 1. If payment is not made, the appeal shall be rejected as inadmissible.

Section 68

The amount for the fees, service costs and other payments provided for in this Act shall be stipulated in the regulations. It shall also be possible to decide by regulation that the renewal fee referred to in Section 41 may be cancelled for one or more fee years.

Section 69

The Minister of Industry shall lay down further provisions concerning patent applications and their processing, concerning the arrangement and keeping of the Register of Patents, concerning the publication and contents of the Patent Gazette, concerning the procedures of the Patent Office and the Patent Board of Appeal, and concerning the general implementation of this Act. It may thus be prescribed that the records of the Patent Authority relating to applications filed shall be available to the public.

The Minister of Industry may direct that, at the request of the authority of another country, the Patent Authority may inform the said authority of the processing of patent applications filed in this country. The Minister of Industry may also direct that the Patent Authority in this country, in deciding whether the conditions for patentability are complied with, may accept novelty searches which have been carried out for that purpose by a corresponding authority in another country or by an international institution.

The Minister of Industry may furthermore direct that, at the request of the Patent Authority and within a time limit fixed by that Authority, any applicant who, in any country, has filed a corresponding application for a patent shall furnish information about the result of the examination as to the patentability of the invention which has been communicated to him by the patent authority of that country and transmit a copy of the correspondence to the said authority. However, no obligation to furnish information may be prescribed in respect of any application referred to in Part III of this Act which has been the subject of an international preliminary examination on which a report has been filed with the Patent Authority.

Section 70

In a case of extreme necessity in the event of an emergency due to natural disaster, war or imminent risk of war, the Minister of Industry may direct that all rights for the exploitation of an invention devolve on the state or any other party that the Minister directs. Full compensation shall be payable for such a transfer but if no agreement can be reached on the amount of compensation a decision shall be made according to criteria laid down in Act no. 11/1973.

If, on the grounds referred to in Paragraph 1, the right to exploit an invention is transferred to a party other than the state and if the said party fails to pay the appropriate compensation the state is obliged, on demand of the party who has right to compensation, to pay the amount without delay.

Section 71

The Patent Office may undertake projects involving the acquisition and processing of data in its keeping or which it has access to and which is available to the public. Rules for governing such service and fees shall be laid down in the regulations.

Section 72

If, apart from cases referred to in Paragraph 2, the non-observance of a time limit vis-à-vis the Patent Authority prescribed by or provided for in this Act causes a loss of rights to an applicant and he or his agent

has taken all due care reasonably required, and if he takes appropriate action within two months after the removal of the cause of non-observance though not later than one year after the expiry of the time limit, the Patent Authority shall re-establish his rights. In order for the right to be re-established the applicant shall, within the same time limit, provide a written request in this regard and pay the required fees.

The provisions of Paragraph 1 apply *mutatis mutandis* if an applicant or a proprietor of a patent has not paid a renewal fee within the time limit prescribed in Paragraph 3, Section 41 or Paragraph 3, Section 42 provided that the request for re-establishment of rights is filed and the renewal fee is paid not later than six months after the expiry of the time limit.

The provisions of Paragraph 1 shall not apply to the time limit referred to in Paragraph 1, Section 6 and Paragraph 3, Section 25.

Section 73

If, in cases referred to in Sections 31 and 38, the applicant has sent documents or fees by post, but these were not received in due time, and if the required documents and fees are received by the Patent Authority within two months after the date on which the applicant noticed or should have noticed that the time limit was exceeded and not later than one year after the expiry of the time limit, the Patent Authority shall re-establish the rights, provided that:

1. within 10 days preceding the expiry of the time limit the postal service was interrupted on account of wars, revolution, civil disorder, strike, natural disaster or other like reason in the locality where the sender is staying or has his place of business, and the mailing of documents or fees to the Patent Authority is effected within five days after the resumption of the postal service; or
2. the mailing of documents or fees was effected by registered mail to the Patent Authority not later than five days prior to the expiry of the time limit, though only if the mailing was effected by airmail, where possible, or if the sender had every reason to believe that surface mail would not arrive later than two days after the date of mailing.

If the applicant wishes to have his rights re-established under Paragraph 1, he shall file a written request to that effect with the Patent Authority within the expiry of the time limit referred to.

Section 74

When a request under Sections 72 or 73 has been accepted and, in consequence, a patent application which has been shelved or refused after having been made available to the public shall be processed further, or a lapsed patent shall be regarded as maintained, a notice to that effect shall be published.

Any person who, after the expiry of the time limit prescribed for the resumption of proceedings in respect of a shelved application or after the refusal of the application or after the advertisement of the lapse of the patent, but prior to the publication of the notice under Paragraph 1, in good faith has commenced a commercial exploitation of the invention in this country or made substantial preparations for such exploitation, may continue the exploitation retaining its general character.

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

PART XI

Provisions Concerning Entry into Force

Section 75

This Act shall enter into force January 1, 1992 and at the same time Act no. 12 of June 20, 1923 on Patents shall lapse, with the exceptions of the restrictions attached to other provisions of this Part. At the same time Act no. 15 of April 2, 1946 amending Act no. 12/1923 shall also lapse.

Patents for pharmaceuticals shall not be granted until after five years have elapsed from the entry into force of this Act. A patent may, however, be granted for specific methods for the preparation of such compounds.

[Patents for stimulants or foodstuffs may be granted on the basis of applications filed after 1 January 1992.]¹⁾

The provisions of Part III of this Act shall not enter into force until public notification has been made that Iceland has become a member of the Patent Cooperation Treaty.

The provisions of Sections 8, 22 and 56 of this Act relating to the deposit of cultures of microorganisms shall not enter into force until a date has been set by the regulations, and shall only apply to applications filed after the said date.

Section 76

This Act shall apply to patents granted in accordance with previous Acts or which are pending, with the following exceptions:

1. patents which are referred to in the first sentence of this Section shall only be revoked under provisions of Section 20, Act no. 12 of June 20, 1923;
2. the term of patents granted 10 years previous to the entry into force of this Act or earlier, shall be according to Paragraph 1, Section 4 of Act no. 12 of June 20, 1923. The term of other patents granted in accordance with previous legislation shall be in accordance with this Act, the term, however, never being for a period shorter than 15 years from the date of registration;
3. the provisions of Act no. 12 of June 20, 1923 concerning extension of patents continue to apply to those patent extensions which were granted according to the said Act.

Section 77

If any person has acquired the right to exploit an invention under Paragraph 1, Section 6 of Act no. 12 of June 20, 1923 prior to the entry into force of this Act, this right shall be maintained notwithstanding that the requirements of Section 4 are not fulfilled.

Section 78

[With regard to the processing of, and decisions regarding the patentability of, applications which were filed before 1 January 1992, the provisions of Law No. 12 of 20 June 1923 shall apply, with those exceptions which may result from other provisions of this Part.]¹⁾

Section 79

[Should an application, which was accepted for processing by the Patent Authority before 1 January 1992, not have been advertised before that time, in accordance with Section 13 of Law No. 12 of 20 June 1923, the provisions of this Act regarding the processing of the application shall apply.]²⁾

Section 80

Any person who at the entry into force of this Act has commenced commercial exploitation of an invention which under Act no. 12 of June 20, 1923 was not patentable or has made substantial preparations for such exploitation, may continue the exploitation in accordance with Section 4 of this Act, regardless of whether the exploitation or preparations concerned began after a patent application for the invention was made or of whether a patent is subsequently granted.

Any person who at the entry into force of this Act has commenced a commercial exploitation of an invention for which another party owns the patent, or has made substantial preparations for such exploitation,

¹⁾ Act no. 67/1993, Sect. 2 (valid from January 1 1994)

¹⁾ Act no. 67/1993, Sect. 3 (valid from January 1 1994)

²⁾ Act no. 67/1993, Sect. 4 (valid from January 1 1994)

and the said exploitation is not prohibited under Section 5, Act no. 12 of June 20, 1923, may continue the exploitation retaining its general character notwithstanding that the exploitation is prohibited under Section 3 of this Act.. This right shall only be transferred to others together with the business in which it has arisen or in which the exploitation was intended.

Section 81

If an invention has entered the public domain before the entry into force of this Act due to action taken by the applicant or his agent, and if a patent application for the said invention is made within 6 months from the entry into force of this Act, only Subsection 4, Paragraph 2, Section 1, of Act no. 12 of June 20, 1923 shall apply concerning the extent to which it is possible to grant a patent with regard to the above action and to what extent a patent which has been granted shall be revoked.

Section 82

Renewal fees for patents that are pending or have been granted in accordance with previous legislation first become due, after the entry into force of this Act, on the date when the patent fee according to present regulations, cf. Section 8 of Regulation no. 59/1966, would have next become due. Thereafter renewal fees become due in accordance with this Act.

Renewal fees shall be paid for applications which have been filed previous to the entry into force of this Act. The first payment of such fees shall be calculated from the first occurrence of the date on which the application was originally filed after the entry into force of this Act. Renewal fees for the first two years do not, however, become due until the renewal fee for the third year becomes due.

*Done in Reykjavik,
March 20, 1991*

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