



Law of May 27, 1977,

- (a) Approving the Patent Cooperation Treaty
Done at Washington on June 19, 1970,
(b) Amending the National Legislation on Patents***

1. Approval is hereby given to the Patent Cooperation Treaty done at Washington on June 19, 1970, hereinafter referred to as the "Cooperation Treaty."

2. The provisions of the Cooperation Treaty and, supplementarily, those of this Law shall apply to international patent applications as defined by the Cooperation Treaty and in respect of which the Industrial Property Service acts as receiving Office or designated Office.

The national legislation on patents shall apply where neither the Cooperation Treaty nor this Law provide otherwise.

3. The Industrial Property Service shall act as receiving Office within the meaning of Article 10 of the Cooperation Treaty for international applications filed by Luxembourg nationals or by natural or legal persons having their domicile or registered offices in the Grand Duchy of Luxembourg.

International applications shall be filed with the Industrial Property Service in German or in French.

In addition to the fees laid down by the Cooperation Treaty, the international application shall be subject to the payment of a transmission fee to be paid to the relevant Luxembourg authority. The amount of the fee, the date at which it will fall due and the conditions of payment shall be laid down by Grand-Ducal Regulation.

4. International applications to which the Law of July 8, 1967, on the Disclosure and Putting into Practice of Inventions and Manufacturing Secrets of Interest to Territorial Defense or to State Security applies shall not be transmitted to the International Bureau of the World Intellectual Property Organization nor to the International Searching Authority.

A decision taken under Article 6 of the above-mentioned Law of July 8, 1967, prohibiting the transmission and disclosure of an international application shall be notified to the applicant without delay. The applicant shall have a two-month period, as from the date of notification, in which to request the conversion of his international application to a national application and in which to pay the fees which would have been due if he had filed a national application in the first place. The transmission fee already paid in respect of the international application shall be deducted. Where the latter fee exceeds the amount of national fees, the balance shall be returned to the applicant.

An international application converted to a national application shall take effect as from the date of the international filing.

If the applicant does not request conversion to a national application within the prescribed period, the filing shall be considered relinquished and the documents attached



thereto shall remain definitively secret. In such case, the transmission fee shall not be reimbursed.

5. A Grand-Ducal Regulation, adopted on a proposal by the Minister with responsibility for industrial property, shall specify the International Searching Authority competent for international applications filed with the Industrial Property Service.

6. The Industrial Property Service shall act as the designated Office, as defined in Article 2 of the Cooperation Treaty, for international applications under which protection of an invention is sought for the Grand Duchy of Luxembourg unless the applications have the effect of being European patent applications.

If protection for an invention in the Grand Duchy of Luxembourg is sought by means of an international application, the applicant shall be required to pay, before the expiry of 20 months counted from the priority date, all the fees due at that time as if for the filing of a national application and to furnish a translation in German or French of the international application in those cases where the application has not been filed in one of these two languages.

Within the same period of time, the applicant shall comply with the national legislation as regards the designation of the inventor.

Where the Industrial Property Service acts as the receiving Office, the payment of the transmittal fee shall be considered payment of the national filing fee.

7. An international application for which the Luxembourg Industrial Property Service acts as the designated Office shall have the same effect in the Grand Duchy of Luxembourg, if a filing date has been allotted to it, as a duly filed Luxembourg patent application.

8. The priority right provided for by Article 4 of the Paris Convention for the Protection of Industrial Property may be claimed for an international application even where the initial application was filed in the Grand Duchy of Luxembourg or only for that country.

9. In the event of the International Bureau transmitting to the Luxembourg Industrial Property Service, acting as the designated Office, an international application for which the appropriate receiving Office has refused to grant an international filing date or which the said Office has deemed to have been withdrawn, the Luxembourg Service shall, at the request of the applicant, examine the justification for the decisions taken by the receiving Office as regards the formal requirements. For the purposes of this examination, the applicant shall be required to pay the national fees chargeable in the case of a Luxembourg filing and to supply a translation in German or French if the international application has not been filed in one of these two languages. If the Luxembourg Service arrives at the conclusion that the decision of the receiving Office was not justified under the Cooperation Treaty or its Regulations, it shall treat the international application, as regards its effects in the Grand Duchy, as if the decision had not been taken. Where the contrary is the case, it shall decide to close the proceedings. Decisions taken by the Service shall be notified to the applicant.



The provisions of the preceding paragraph shall also apply where the receiving Office has deemed the designation of the Grand Duchy of Luxembourg to have been withdrawn or where the International Bureau has deemed the international application to have been withdrawn.

10. An international application published under Article 21 of the Cooperation Treaty and for which the Luxembourg Industrial Property Service is the designated Office shall enable its holder to require reasonable compensation, fixed according to the circumstances, to be paid by any person having exploited, in the Grand Duchy of Luxembourg, the invention covered by the international application in circumstances which, under Luxembourg law, would involve that person's liability in cases of infringement of a national patent. The compensation shall be due for the prejudice caused by the person exploiting the invention as from the time that person had knowledge of the contents of the international application and, in any case, as from the day of publication of the application by the International Bureau.

Where the international application has been published in a language other than German or French, the compensation provided for in the preceding paragraph may only be claimed as from the day on which the translation in one of the two languages referred to has been communicated to the Industrial Property Service and made accessible to the public, or that Service or the holder has communicated such a translation to the person exploiting the invention.

The practical details for the communication of translations to the Industrial Property Service, the fees to be paid and the method of payment shall be stipulated in a Grand-Ducal Regulation. That same Regulation shall lay down the arrangements for making the application available to the public.

The text drawn up in the language of publication shall be authentic for all questions concerning the scope of protection afforded by the international application, failing proof to the contrary and subject to the following paragraph.

Third parties may invoke against the holder of an international application the text of the application in the translation if the protection afforded by that text is less extensive than the protection afforded by the same text in the language in which the application has been published.

11. Where, for the same invention, two patents have been granted to the same inventor or to his successor in title, bearing the same priority date, the patent resulting from the initial national filing in the Grand Duchy of Luxembourg shall cease to have effect as of the date of granting of the patent resulting from the international application claiming priority under the initial filing.

In the same way, a patent resulting from the Luxembourg patent application for which priority under an international application has been claimed shall cease to have effect as of the date on which the patent resulting from the international application is granted.

A patent which has terminated in this way shall not be revived should the remaining patent lapse or be annulled.



Any interested person, including the proprietor of the patent, may request the courts to establish that the patent resulting from the Luxembourg application has ceased to produce its effects, in full or, where appropriate, in part as from the date referred to in the first or second paragraph. The procedure for establishing this fact shall be the same as that under the Luxembourg Law on annulment.

* French title: Loi du 27 mai 1977 portant a) approbation du Traité de coopération en matière de brevets, fait à Washington, le 19 juin 1970, b) adaptation de la législation nationale en matière de brevets.

Entry into force: June 18, 1977

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