

Law of May 27, 1977,

(a) Approving the Convention on the Grant of European Patents

Signed at Munich on October 5, 1973,

(b) Amending the National Legislation on Patents*

1. Approval is hereby given to the Convention on the Grant of European Patents signed at Munich on October 5, 1973.

2. A European patent application to which a filing date has been given and a European patent granted shall have the same effect in the Grand Duchy of Luxembourg, in those cases where protection in the Grand Duchy of Luxembourg has been requested, as a national patent application received by the Luxembourg Industrial Property Service and a patent granted by that Service.

3. A European patent application in which protection is sought in the Grand Duchy of Luxembourg shall not ensure the protection provided for in Article 64 of the European Patent Convention.

A published European patent application shall, however, enable its holder to require reasonable compensation, fixed according to the circumstances, from any person having exploited in the Grand Duchy of Luxembourg the invention that is the subject of the European patent 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 patent application and, at the latest, as from the day of publication of the application by the European Patent Office.

4. Where the patent application has been published in a language other than French or German, the compensation provided for in Section 3 may only be claimed for the period following the day on which a translation in one of the two above-mentioned languages has been submitted to the Industrial Property Service and made accessible to the public or handed to the person exploiting the invention.

The holder of the European patent application shall be authorized to revise the translation. The revised translation shall take effect only when it has been made accessible to the public or handed to the person exploiting the invention.

The requirements for the submission of translations to the Industrial Property Service, the fees to be paid and the method of payment shall be laid down by Grand-Ducal Regulation. The same Regulation shall lay down the arrangements for the method of making available to the public.

5. The text drawn up in the language of publication shall be authentic for all questions concerning the scope of protection afforded by the European patent application, subject to Section 6.

6. Third parties may invoke against the proprietor of the patent the text of the European patent application in the translation provided for by Section 4 where that text of the European patent application affords less extensive protection than the text in the language of the proceedings.

Any person who, in the Grand Duchy, has in good faith begun to work the invention or has made effective and serious preparations to that end, without such working constituting an infringement of the application or the patent in the text of the initial translation, may continue such working free of charge within his own undertaking or for the purposes of the latter, once the revised translation has taken effect.

* French title: Loi du 27 mai 1977 portant

a) approbation de la Convention sur la délivrance de brevets européens, signée à Munich, le 5 octobre 1973

b) adaptation de la législation nationale en matière de brevets.

Entry into force: June 18, 1977.

Source: *Mémorial – Journal officiel du Grand-Duché de Luxembourg, Recueil de législation*, A–No 32, June 14, 1977.

7. Notwithstanding the option of filing European patent applications with the European Patent Office in Munich or its branch in The Hague, the European patent application may be filed with the Industrial Property Service in Luxembourg.

Where an application is filed with the Luxembourg Service, the applicant must not only satisfy the conditions laid down by the European Patent Convention but also pay a national fee, the amount and conditions of which shall be laid down in a Grand-Ducal Regulation.

8. A European patent application whose subject matter is an invention having a bearing on the defense of the territory shall obligatorily be filed with the Luxembourg Industrial Property Service.

Applications referred to in the above paragraph shall be subject to the Law of July 8, 1967, on the Disclosure and Putting into Practice of Inventions and Trade Secrets of Interest to Territorial Defense or to State Security.¹ Where a Ministerial decision recognizes an application as falling under the aforementioned Law, that decision shall be immediately communicated to the applicant who may, within a period of two months from the date of the Ministerial decision, request conversion of his European patent application to a national patent application. The applicant shall have an additional period of three months to pay the fees due for a national filing and, where appropriate, to submit a translation in German or in French of the description and the claims.

A European patent application that has been converted to a national patent application shall have effect as from the filing date of the European patent application.

Where it is decided that a European patent application does not concern an invention affecting defense, the Industrial Property Service shall forward it without delay to the European Patent Office and shall inform the applicant accordingly.

9. If a European patent has been granted to a person not entitled under Article 60(1) of the European Patent Convention, the person entitled under that Article may, without prejudice to any other rights or proceedings, claim transfer of the patent in his capacity as proprietor.

Where a person is entitled to a part only of the European patent, he may claim transfer of the patent in his capacity as co-proprietor, under the first paragraph.

The rights referred to in the first and second paragraphs may only be exercised in justice within a period of two years from the date on which the note concerning the granting of the European patent has been published in the European Patent Gazette. The preclusion shall not apply if the proprietor of the patent knew at the time the patent was granted or acquired that he was not entitled to the patent.

Such action at law shall be required to be entered in the Luxembourg Patent Register, failing which it shall be inadmissible. Likewise, the decision establishing the relinquishment of the application and, on pain of not being opposable, the final decision given on the application shall also be entered.

10. Annual renewal fees shall be paid each year, in advance, to the Registration and Estates Administration in respect of the European patent. The initial payment shall be made for the year, calculated from the filing of the application, following that of publication of the patent grant in the European Patent Gazette.

The amount of the renewal fees and, where appropriate, the additional fees to be paid and the arrangements for their payment shall be the same as those laid down by the Luxembourg legislation on patents.

The annual fee to be paid the first time shall be that which is due for a Luxembourg application or patent having the same filing date as the European application.

Where an annual fee has not been paid at the due date, it may still be validly paid within a period of six months starting with the due date, subject to the payment at the same time of an additional fee.

If an annual fee payable in respect of a European patent falls due within two months of the date on which the date of the granting of the patent has been published, it shall be deemed to have been validly paid on condition that payment is made within the specified period. No additional fee shall be charged.

¹See *Industrial Property*, 1968, p. 105.

11. A European patent application may be converted to a Luxembourg patent application in those cases provided for in Article 135(1)(a) of the European Patent Convention.

12. If the request for conversion has been presented in due form and submitted in good time to the Luxembourg Industrial Property Service, the patent application shall be deemed to have been filed on the date of the European patent application.

The documents accompanying the European patent application presented to the European Patent Office shall be deemed to have been presented at the same date to the Luxembourg Industrial Property Service.

The rights deriving from the European patent application shall remain unaffected.

13. The Industrial Property Service shall acknowledge receipt of the request for conversion, shall enter it in the Register and shall give the proprietor of the converted application a period of three months in which to pay the fees and renewal fees due on the date of receipt, to submit a translation in German or French where the European application has been drawn up in English and to designate, where appropriate, an agent. The renewal fees due shall be those which would have become due for the filing of a Luxembourg application.

14. The patent application resulting from the conversion shall be subject to the provisions in respect of Luxembourg patent applications, subject to Article 137(1) of the European Patent Convention.

15. Where the subject matter of a Luxembourg patent is an invention identical to another for which a European patent has been granted to the same inventor or to his successor in title with the same priority date, the national patent, insofar as it covers the same invention as the European patent, shall cease to have effect on the date at which:

(a) the time allowed for entering opposition to the European patent has expired without opposition having been entered;

(b) the opposition procedure has resulted in a final decision to maintain the European patent;

(c) it was granted if that date is later than that referred to in items (a) or (b), as appropriate.

A patent which has terminated in this way shall not be revived in the event of the European patent subsequently lapsing or being annulled.

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

Simultaneous protection under a European patent or European patent application and a national patent or national patent application shall be provided up to the date referred to in the first paragraph.

16. Where, for the same invention, a patent resulting from a Luxembourg patent application and a patent resulting from a European patent application converted to a Luxembourg patent application had been granted to the same inventor or to his successor in title with the same filing or priority date, the first mentioned patent shall terminate on the date at which the patent resulting from the converted European patent application has been granted.

A patent thus terminated shall not be revived should the remaining patent subsequently lapse or be annulled.

The proceedings for establishing these facts shall be the same as in the preceding Section.

17. The Minister having responsibility for industrial property shall have the task of receiving the letters rogatory issued by the European Patent Office and of forwarding them to the competent authority for execution, in accordance with Article 131 and Rule 99(1) of the European Patent Convention.

The same shall apply to letters rogatory given by Luxembourg courts and addressed to the European Patent Office.



18. Any proceedings pending before a Luxembourg court in respect of the scope of protection of a European patent shall be suspended for as long as opposition to the patent may be entered before the European Patent Office or for as long as that Office has taken no final decision on such opposition.