

L.N. 99 of 2007

**PATENTS AND DESIGNS ACT
(CAP. 417)**

European Patent Convention Regulations, 2007

IN exercise of the powers conferred by article 59 of the Patents and Designs Act, the Minister for Competitiveness and Communications has made the following regulations:-

1. (1) The title of these regulations is the European Patent Convention Regulations, 2007. Title and commencement.

(2) These regulations shall be deemed to have come into force on 1st March, 2007.

2. In these regulations, unless the context otherwise requires - Interpretation.

“the Act” means the Patents and Designs Act, and words and expressions used in these regulations shall have the same meaning as is given to them in the Act;

“the Convention” means the Convention on the Grant of European Patents, done at Munich on 5th October, 1973 as revised and done at Munich on 29th November, 2000;

“European patent” means a patent granted by the European Patent Office in accordance with the Convention;

“European patent application” means an application for a European patent filed in accordance with the Convention;

“the Office” means the national office responsible for granting patents in Malta.

3. The fees to be paid in respect of any application, registration or any other matter under these regulations shall be those prescribed in the Schedule of Fees to these regulations. Fees.

4. (1) European patents and European patent applications designating Malta shall be governed by these regulations and by the Act unless otherwise provided in the Convention. Applicable law.

(2) In the case of conflict between the provisions of the Convention and those of these regulations or of the Act, the provisions of the Convention shall prevail.

Filing of European patent applications.

5. (1) European patent applications, except divisional applications, may be filed with the Office in any language admissible under Article 14 (1) and (2) of the Convention. This is to be accompanied by the prescribed transmittal fee.

(2) The following, shall require a translation into English to be filed within one month of filing the European patent application:

- (a) an indication that a European patent is sought;
- (b) the information that will enable the applicant to be identified.

(3) Applicants having their residence or principal place of business in Malta shall file a European patent application concerning an invention that may affect the national security of Malta with the Office; except in cases where priority is claimed from a first filing in Malta.

Effects of a European patent application.

6. (1) A European patent application, designating Malta and which has been accorded a filing date, shall be equivalent to a regular national application, where appropriate, with the priority claimed for the European patent application and whatsoever the outcome of such application may be.

(2) A published European patent application designating Malta shall confer the protection conferred under Article 27 by virtue of Article 28 of this Act as from the date of its publication by the European Patent Office.

Effects of a European patent.

7. (1) A European patent designating Malta shall, subject to sub-regulations (2) to (4) hereof, confer from the date of the mention of its grant by the European Patent Office the same rights as a patent granted by the Office.

(2) (a) The owner of the patent shall furnish a translation into English to the Office within the prescribed period as stipulated in Article 65 (1) of the Convention.

(b) An extension of this period may be applied for and is to be accompanied by the prescribed fee. The requested extension shall not exceed two months.

(3) Where, as a result of an opposition procedure before the European Patent Office, the European patent is maintained as amended, subregulation (2) above shall *mutatis mutandis* apply.

(4) In the event of failure to comply with the requirements laid down in accordance with subregulations (2) or (3) hereof, the European patent shall be deemed to be void *ab initio*.

(5) Re-establishment of Rights under Article 46 of the Act shall apply *mutatis mutandis*.

8. (1) Where a translation prescribed under regulation 7 of these regulations confers protection which is narrower than that conferred by the European patent in the language of the proceedings, such translation shall be regarded as the authentic text other than for revocation proceedings.

Authentic text of European patents.

(2) The owner of the European patent may file a corrected translation at any time. The corrected translation shall take effect only after it has been made available to the public by the Office.

(3) Any person who, in good faith, is using or has made effective and serious preparations for using an invention, the use of which would not constitute infringement of the patent in the original translation may, after the corrected translation takes effect, continue such use in the course of his business or for the needs thereof without payment.

9. Annual fees for European patents shall be paid to the Office for each year following that in which the mention of the grant of the European patent is published by the European Patent Office.

Annual fees.

10. (1) A European patent application designating Malta may be converted into a national patent application where the European patent application is deemed to be withdrawn pursuant to Article 77(5) of the Convention or, because the translation of the application under Article 14(2) of the Convention has not been filed in due time, pursuant to Article 90(3) of the Convention.

Conversion into a national patent application.

(2) The applicant shall within two (2) months from the date when the Comptroller invites the applicant to submit the translation into any one of the official languages of the Office pay the prescribed fee.

(3) Where the Comptroller decides that a request for a conversion application is admissible, it shall be treated as an application for registration of a patent under the Act.

(4) A decision of the Comptroller in relation to a conversion application shall be treated as a decision of the Comptroller under the Act.

Simultaneous protection.

11. Where a European patent designating Malta and a national patent having the same filing date or, where priority has been claimed, the same priority date, have been granted to the same person or his successor in title, the national patent shall have no effect to the extent that it covers the same invention as the European patent as from the date on which the time-limit for filing an opposition to the European patent has expired without an opposition having been filed or as from the date on which the opposition procedure has resulted in a final decision maintaining the European patent.

Schedule of Fees

(Regulation 3)

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| Transmittal fee for the filing of a European Patent | Lm20 + courier service charges |
| Conversion into a national patent application ... | Lm300 |
| Submission of translated documents in terms of regulation 5(1)..... | Lm100 |
| Submission of translation in terms of regulation 7(2)(b) | Lm100 |
| Filing of a corrected translation | Lm 50 |