
Patents Act of the Kingdom

(of November 7, 1910, as last amended
by the Act of the Kingdom of May 29, 1987)*

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Chapter I

Definitions. Patents: A General Notion.

Subject Matter for Which and Persons to Whom Patents are Granted

1. In this Act of the Kingdom and the Rules based on it:

European Patent Convention shall mean the Convention on the Grant of European Patents signed in Munich on October 5, 1973;

European Patent shall mean a patent granted under the European Patent Convention, insofar as it has been granted for the Kingdom;

Cooperation Treaty shall mean the Patent Cooperation Treaty done at Washington on June 19, 1970;

International Application shall mean an application filed in pursuance of the Cooperation Treaty, in which the Kingdom is designated and from which it is evident that the applicant wishes to obtain for the Kingdom a patent granted in accordance with this Act of the Kingdom.

1A. A person who has invented a new product or a new process shall, upon his application, be granted a patent.

2.-

* *Dutch title*: Rijksoctrooiwet.

Entry into force: December 1, 1987.

Source: *Bijlage bij het Bijblad bij De Industriële Eigendom*, March 15, 1979, and November 16, 1987.

Note: This text is based on an official English translation furnished by the Netherlands authorities and prepared by C. Tak-van den Bergh, who is the copyright owner thereof.

** Added by WIPO.

(1) Products or processes shall be considered not to be new only when they already form part of the state of the art.

(2) The state of the art shall comprise everything made available to the public by means of a description or in any other way before the date of filing of the application.

(3) Furthermore, the state of the art shall also comprise the content of previously filed applications which were laid open to public inspection, in accordance with Section 22C or 25(2), on or after the date referred to in paragraph (2), above.

(4) The state of the art shall also comprise the content of European patent applications as provided for in the European Patent Convention and of international applications as provided for in Article 158(1) and (2) of the said Convention whose filing date, in accordance with Article 54(2) and (3) of the said Convention, is prior to the date referred to in paragraph (2), above, and which have been published on or after that date under Article 93 of the said Convention or under Article 21 of the Cooperation Treaty, respectively, provided that the Kingdom has been designated in the published application.

(5) This Section shall not apply to everything that was made available to the public within six months preceding the filing of a patent application as a direct or indirect consequence of either an evident abuse in relation to the applicant or his legal predecessor, or the fact that the applicant or his legal predecessor displayed the product in question or showed the process in question at an official, or officially recognized, international exhibition falling within the terms of the Convention on International Exhibitions signed in Paris on November 22, 1928, and last revised by Protocol of November 30, 1972.

(6) Official recognition of exhibitions in the Netherlands shall be accorded by Our Minister of Economic Affairs, and of exhibitions in the Netherlands Antilles or Aruba by the Government of the country concerned.

2A.–

(1) The subject matter for which a patent application has been filed shall be considered as an invention if, before the date of filing, having regard to the state of the art, it was not obvious to a person skilled in the art.

(2) Where this Section applies, the content of the patent applications referred to in Section 2(3) and (4) shall not be taken into consideration.

3.–

(1) An invention shall only be patentable if it is capable of procuring some result in any field of industry, including agriculture.

(2) Nevertheless no patent shall be granted in respect of plant or animal varieties or essentially biological processes for the production of plants or animals, with the exception of microbiological processes or the products thereof.

4. [Repealed]

5. No patent shall be granted for products or processes the publication of which would be contrary to public order or morality.

5A. Each patent application shall relate to one invention only, or to a group of inventions linked in such a way that they form a single general inventive concept. Further rules concerning this may be adopted by Order in Council of the Realm.

6. Subject to Sections 9, 10 and 11, the applicant shall be deemed to be the inventor.

7.–

(1) A person who has duly filed, in any of the countries party to the International Union for the Protection of Industrial Property, in accordance with the laws in force in that country, or, in accordance with treaties concluded between two or more of the above-mentioned countries, an application for a patent or for a utility certificate or for the protection of a utility model shall enjoy a right of priority within the Kingdom for a period of 12 months from the date of filing the application with regard to the obtaining of a patent for

the subject matter in respect of which the protection referred to above has been applied for. The foregoing shall apply *mutatis mutandis* to a person who has applied for an inventor's certificate if the relevant legislation provides for the possibility of choosing between the grant of such a certificate or of a patent.

(2) By an application within the meaning of paragraph (1) shall be understood any application of which the date of filing can be ascertained, whatever may be the subsequent fate of the application.

(3) If the person entitled to do so has filed more than one application for the same subject matter, only the first application shall serve as a basis for claiming a right of priority. Nevertheless, a subsequent application for protection in the same country may serve as a basis for claiming a right of priority, provided that, at the date of filing the subsequent application, the previous application has been withdrawn, abandoned or refused without having been laid open to public inspection and without having left any rights outstanding, and provided it has not yet served as a basis for claiming a right of priority. If a subsequent application has served as a basis for claiming a right of priority, the previous application may not thereafter serve as a basis for claiming a right of priority.

(4) For the purposes of Sections 2(2), (3) and (4) and 2A, the effect of the right of priority shall be that the application for which this right exists shall be deemed to have been filed on the filing date of the application which confers the right of priority.

(5) The right of priority cannot be refused on the ground that the applicant claims more than one right of priority, even if the rights of priority originated in different countries. Neither can priority be refused on the ground that the subject matter for which a patent application has been filed comprises elements for which no rights were claimed in the claims formulated in the application in the country of origin, provided that the documents of the latter application mention the product in question or the process in question with sufficient accuracy.

(6) A person who wishes to avail himself of the right of priority must claim it in writing upon filing the application or within three months thereafter, stating the filing date of the application upon which his claim is based and also the country in which or for which it was filed; within 16 months after filing the application upon which his claim is based, he must state the number of that application. Finally, he must submit the documents which shall be designated by the Patent Office before such date as may be fixed by that Office.

(7) The right of priority shall lapse if it has not been claimed upon filing the application or within three months from the filing date of the application or if the documents required for that purpose have not been submitted prior to the date fixed therefor.

8. [Repealed]

8A.–

(1) The applicant may divide a previously filed application by filing a divisional application for part of the contents thereof. The latter application shall be deemed to be filed on the filing date of the original application except insofar as the provisions of Sections 22(1), 22A(5) and 22C(3) are applicable.

(2) The division of an application pursuant to a decision of a Division of the Patent Office to the effect that the application is in conflict with the provisions of or under Section 5A shall be effected within three months from the date on which such a decision has become final. The division of an application on the applicant's own initiative shall be possible until six months, at the latest, from the date of filing a request as referred to in Section 22J and thereafter with the written permission of the Patent Office.

9. The applicant shall not be entitled to a patent insofar as the content of his application has been obtained unlawfully from subject matter made by or worked by another person or from descriptions, drawings or models belonging to another person, without that person's consent. The latter person shall remain entitled to a patent to the extent that the subject matter thus unlawfully obtained is patentable. Where Section 2(3) and (4) is applicable to the subject matter of an application filed by the person from whom the above-mentioned subject matter has been so taken, the application filed by the person who has so obtained it shall not be taken into consideration.

10.–

(1) Where the product or the process for which a patent has been applied for has been invented by a person employed in the service of another, the nature of which service entails the use of the employee's special knowledge towards the making of inventions of the same kind as that to which the patent application relates, the employer shall be entitled to the patent. Where Section 2(3) and (4) is applicable to the subject matter of an application filed by the employer referred to in the preceding sentence, an application filed by a person not having any right to a patent shall not be taken into consideration.

(2) Where the inventor cannot be deemed to have found compensation for the lack of being granted a patent in the salary he earns or in any extra remuneration he receives, the employer shall be obliged to award him equitable remuneration having regard to the pecuniary importance of the invention and the circumstances under which it was made. Where the employer and the inventor cannot agree on the amount of that remuneration, they may apply to the Patent Office in writing with a request that the amount be determined by the Patent Office. The Patent Office shall comply with that request. The parties shall be bound by its decision, which shall be accompanied by the reasons therefor. If the employer and the inventor do not avail themselves of this right, Section 56 shall be applicable. Any right of the inventor to claim under this provision shall lapse after expiration of three years from the date of the grant of the patent.

(3) Any stipulation which differs from the provisions laid down in the preceding paragraph shall be void.

11. Where a product or a process has been invented by two or more persons who worked together by agreement, they shall have a joint right to a patent.

12. *[Repealed]*

12A.—

(1) Any person who has made an invention for which a patent application has been filed, but who cannot claim any title to a patent under Section 10(1), or under an agreement concluded with the applicant or his predecessors in title, shall have a right to be mentioned as the inventor in the patent.

(2) Any stipulation which differs from the provisions laid down in the preceding paragraph shall be void.

Chapter II **The Grant of Patents**

Part I

The Patent Office and The Industrial Property Office

13. Applications for a patent shall be filed at the Patent Office and patents shall be granted by the Patent Office.

14.—

(1) There exists in the Netherlands an Industrial Property Office. This Office is an institution of the Netherlands. It shall serve, insofar as patents are concerned, as the central registry for the Kingdom, pursuant to Article 12 of the International Convention for the Protection of Industrial Property. The Patent Office forms part of the Industrial Property Office.

(2) The Patent Office shall consist of:

- (a) a Central Division;
- (b) Examining Divisions;
- (c) Appeal Divisions;
- (d) Special Divisions.

An Examining Division or a Special Division may consist of one member.

(3) The President, one or more Vice-Presidents and the other members of the Patent Office shall be appointed and dismissed by Us. Before taking office, the President shall make a pledge to Us and the members shall make a pledge to the President, the contents of which shall be determined by Order in Council.

(4) The President of the Patent Office shall be the Director of the Industrial Property Office at the same time.

(5) Wherever the Industrial Property Office is mentioned in this Act of the Kingdom, it shall be considered a reference to the Office instituted under paragraph (1), above, unless there is evidence to the contrary.

15.–

(1) The further organization and the procedure of the Patent Office shall be regulated by Order in Council, subject to the provisions laid down in this Chapter.

(2) The Order in Council referred to in the preceding paragraph shall regulate *inter alia*:

(a) the number of Vice-Presidents and members of the Patent Office;

(b) the composition of the Divisions and the powers of the Divisions to perform the duties allocated to the Patent Office;

(c) the procedure on deputizing for the President;

(d) the summoning and hearing of applicants, opponents and other interested parties, as well as witnesses and experts in the execution of this Act of the Kingdom, and the compensation to be awarded to witnesses and experts;

(e) the registers to be kept pursuant to this Act of the Kingdom and the procedure in respect of entries to be made in those registers of documents other than patent applications;

(f) the requirements with which documents other than patent applications shall comply for entry in the said registers pursuant to this Act of the Kingdom;

(g) [*repealed*]

(h) the procedure for making the registers of the Patent Office available for inspection by the public;

(i) the hours of business during which the Industrial Property Office shall be open to the public in the execution of this Act of the Kingdom.

(3) By Order in Council fees shall be payable for:

(a) entry in the register of documents other than patent applications;

(b) issuing copies or extracts from the registers of the Patent Office;

(c) issuing priority certificates;

(d) extending the time periods determined by virtue of this Act of the Kingdom;

(e) issuing copies as provided for in Section 29(i).

16. The order in which rights shall arise from entry in the registers of the Patent Office of documents other than patent applications shall be determined by the date of filing of such documents at the Patent Office for entry in the registers.

17.–

(1) The Patent Office shall have the right to refuse entry in a register of a document, provided it is not a patent application, only where it does not comply with the requirements prescribed in or by virtue of this Act of the Kingdom for a document of that kind, where it does not explicitly indicate the patent to which it relates or where any condition for entry in the registers stipulated in this Act of the Kingdom has not been satisfied.

(2) The person who requests the making of the entry shall be notified in writing of the grounds for the refusal.

(3) An appeal shall lie from this refusal to a court of law in accordance with the provisions laid down in Section 55.

(4) Any person who feels aggrieved by an entry in a register of a document, provided it is not a patent application, shall have a right to request the court, in accordance with the provisions laid down in Section 55, to cancel such entry.

17A.–

(1) If the applicant, despite having exercised all due care required under the circumstances, was unable to observe a time limit vis-à-vis the Industrial Property Office, the Patent Office or the Office referred to in Section 58, the prior state may be restored at his request if the non-observance of the time limit has had the direct consequence, under this Act of the Kingdom, of the loss of any right or means of redress.

(2) Paragraph (1) shall not apply to a payment, admissible after the due date, that has not been effected punctually, to a patent application that has not been filed within the time limit provided for in Section 7(1), and to the non-observance of the time limit provided for hereafter in paragraph (3).

(3) The request must be filed at the Patent Office in writing as soon as possible, but at the latest within one year from the expiry of the unobserved time limit. The omitted act must be accomplished at the same time as the request is submitted. The request shall be accompanied by the reasons therefor and shall be signed by the person who made the request or a person appointed as his representative authorized in writing. If the person who made the request does not live in the Kingdom, he shall be obliged to elect domicile with a representative in the Netherlands. When the request is filed, a fee to be prescribed by Order in Council of the Realm shall be payable.

(4) A Special Division of the Patent Office, set up for this purpose, shall take a decision on the request, the person who made the request having been heard or at least duly summoned. The decision shall state the grounds on which it is based and the Patent Office shall give notification of it without delay to the person who made the request. With regard to such a decision, Section 24A shall apply *mutatis mutandis*.

(5) The Patent Office shall enter the restoration to the prior state in the public registers and shall give notice of it in the Journal referred to in Section 25 where notice of the consequence of non-observance of the time limit was previously given. It shall, if or as soon as the application has been laid open to public inspection, annex the documents relating to the restoration to the application laid open to public inspection.

(6) Any person who, during the period between the loss of rights or the means of redress and the restoration to the prior state, has, within the Kingdom, begun the manufacture or the putting in practice, in or for his business, of the invention for which a patent has been granted as a result of that restoration, or who has begun to carry out his intentions to do so, may continue to do the acts referred to in Section 30(1), notwithstanding the patent. Section 32(2) and (5) shall apply *mutatis mutandis*.

18.–

(1) The Patent Office and its Divisions shall be empowered to hear witnesses and experts. Any person who has been summoned as a witness and has his residence in the Netherlands shall be required to obey that summons, to declare to the President of the Patent Office or of the Division under oath or in an equally binding form that he will speak the whole truth and nothing but the truth, and to give evidence, without prejudice to the right to refuse evidence where any of the relations referred to in Section 1946 of the Netherlands Civil Code exists between the witness and an interested party who has been summoned or who has appeared, or where the witness is in a position referred to in paragraph (3) of that Section. The experts shall be obliged to perform their task impartially and to the best of their knowledge. The Patent Office and its Divisions may enjoin secrecy upon them.

(2) The Patent Office and its Divisions shall furthermore be empowered to order any interested party who has his residence in the Netherlands to appear in person.

18A. By Order in Council, provisions shall be laid down in respect of the admission of persons who are to act as representatives to the Patent Office, as well as provisions in respect of the professional conduct of representatives and the supervision thereof. By that Order in Council, the authorities charged with that supervision may be empowered to summon and hear witnesses and experts, and witnesses living in the Netherlands may be required to appear and to give evidence under oath or in an equally binding form, as specified by the Order in Council, without prejudice to the right to refuse to give evidence on the grounds stated in Sections 217 to 219 of the Netherlands Code of Criminal Procedure [*Het Nederlandse Wetboek van*

Strafvordering]. Furthermore, provisions shall be laid down for such cases in respect of the summoning and hearing of the witnesses and experts.

19. All documents addressed to and issued by the Patent Office shall be exempt from stamp duty and from the formality of registration.

19A. If the Industrial Property Office is closed on the last day of any time limit to be observed under this Act of the Kingdom by or vis-à-vis the Patent Office, that time limit shall be extended for the purposes of this Act of the Kingdom until the end of the first day thereafter on which the Office is again open.

19B.–

(1) The Patent Office shall act as a receiving Office within the meaning of Article 2(xv) of the Cooperation Treaty and shall exercise its functions in that capacity in accordance with the provisions of the Treaty.

(2) The amount of the transmittal fee referred to in Rule 14.1 of the Regulations under the Cooperation Treaty and its due date, and the amount of the fee referred to in Rule 20.9 of those Regulations shall be prescribed by Order in Council of the Realm. Furthermore, by Order in Council further rules may be laid down with regard to the subjects in respect of which the receiving Office is empowered to make provisions by virtue of the above-mentioned Regulations.

19C. The Patent Office shall act as a designated Office within the meaning of Article 2(xiii) of the Cooperation Treaty if the Kingdom has been designated by the applicant pursuant to Chapter I of that Treaty and if it is evident from the application that he wishes to obtain for the Kingdom a patent granted in accordance with this Act of the Kingdom.

19D. The Patent Office shall act as an elected Office within the meaning of Article 2(xiv) of the Cooperation Treaty if the Kingdom has been elected by the applicant pursuant to Chapter II of that Treaty and if the Patent Office also acts as a designated Office as referred to in Section 19C.

Part II *Grant of the Patent*

20.–

(1) Applications for a patent shall be accompanied by a specification of the invention and both the application and the specification shall be written in the Dutch language. For a period of time which it shall determine, the Patent Office may grant exemption from the provision that the application and the specification shall be written in the Dutch language if special circumstances so warrant.

(2) Where these provisions are not complied with, the documents which have been filed shall not be considered as an application for a patent.

21. Upon filing the application proof shall be furnished that a fee, the amount of which shall be prescribed by Order in Council of the Realm, has been paid to the Industrial Property Office.

21A. Not until proof has been furnished that a fee payable pursuant to this Act of Kingdom or the Patent Rules has been paid shall the application and the other documents for which the fee is due be deemed to have been filed.

22.–

(1) The date of filing at the Patent Office as well as a serial number shall be marked on the application. Without delay the Patent Office shall issue a receipt to the applicant which shall make mention of that date and that number.

(2) Applications shall be entered in a register in the order in which they are numbered and shall state the number.

22A.–

(1) The patent application form shall:

(a) contain the name and place of residence of the applicant;

(b) contain the signature of the applicant or of a person appointed as his representative by written authorization;

(c) contain a concise designation of the subject matter of the invention;

(d) be accompanied by a specification of the invention, which gives a definition at the end, in one or more claims of the subject matter for which the exclusive right is sought.

(2) The application form and the accompanying specification of the invention and drawings shall comply with the further formal requirements to be prescribed by Order in Council.

(3) Furthermore, a fee to be prescribed by Order in Council of the Realm shall be payable in respect of the application for each page of the specification and drawings pertaining to the application and arranged in accordance with the formal requirements referred to in paragraphs (1) and (2). A refund of this fee shall be given, unless Section 22C(2) or (3) applies, where the application has been withdrawn, not later than one month before expiry of the time limit referred to in paragraph (1) of that Section.

(4) If the applicant does not have his place of residence in the Kingdom, he shall be required to elect domicile in the Netherlands with a professional representative, which election of domicile, subject to change of the domicile so elected notified to the Patent Office in writing, shall be deemed to remain in force even after the grant of the patent. Where the change of elected domicile takes place after the grant of the patent, the person with whom domicile is elected need not be a professional representative.

(5) Where the provisions under or by virtue of this Section have not been complied with at the time of filing the application, the Patent Office shall, within one month, notify the applicant accordingly, stating the provisions that have not been complied with. The application shall lapse if at the end of a period of five months from the date of filing, and without any further amendments, the stated provisions still have not been complied with.

22B.–

(1) The specification of the invention shall be clear and complete; the definition at the end shall be precise. The specification shall, if necessary, be accompanied by corresponding drawings and, if required, it shall be elucidated by models, samples and tests, and furthermore it shall be of such a nature as to enable a person skilled in the art to understand the invention and put it in practice on the basis of that specification.

(2) Further formal requirements and further provisions for the making of the specification and drawings may be prescribed by Order in Council.

22C.–

(1) As soon as possible after expiration of 18 months from the filing date or, if the application is one for which one or more priority rights have been claimed, after the first date of priority, the Patent Office shall effect notification of the application in the Journal referred to in Section 25 and shall lay the application with the specification and drawings pertaining thereto and the other documents to be designated by Order in Council open to public inspection at the Industrial Property Office.

(2) Where the applicant so requests in writing, the acts referred to in paragraph (1) shall be carried out as soon as possible after the filing of that request.

(3) In respect of a new application as referred to in Section 8A, the acts referred to in paragraph (1) shall be carried out as soon as possible after the filing of that application, but not earlier than in respect of the original application.

(4) This Section shall not apply if the Patent Office is of the opinion that the publication of the product or the process in respect of which a patent has been applied for would be contrary to public order or morality.

22D.–

(1) In respect of an application, as long as no patent has been granted thereon, a renewal fee to be prescribed by Order in Council of the Realm shall be payable to the Industrial Property Office two years after the filing thereof on the last day of the month in which the application was filed or is deemed to have

been filed by virtue of Section 8A, and each subsequent year on that date. For an application filed under Section 8A, the first payment shall only be due after the date of actual filing. Where payment is effected after the due date, additional fees shall be payable, the amount of which shall be prescribed by Order in Council of the Realm.

(2) The application or a patent subsequently granted thereon shall lapse if the fees as provided for in paragraph (1) have not been paid within six months following the due date. Payment within a period not exceeding six months prior to the due date shall be admissible. The Patent Office shall enter the lapse in the public registers, shall give notification of it in the Journal referred to in Section 25, and shall inform any third party who has made a request under Section 22I(2) or (10) or 22J(1), which is still under consideration, of that lapse.

(3) If payment has not been effected on the due date, the Patent Office shall remind the applicant of that payment in writing within 14 days. If payment has not been made within three months from the due date, the Patent Office shall send a copy of this reminder to all persons who have acquired rights or who have instituted legal action on the basis of the application, as shown by documents entered in the public registers. Omission of the reminder cannot be invoked by law.

22E.–

(1) Withdrawal of an application which has been laid open to public inspection or which has been published shall have no effect vis-à-vis third parties:

(a) where four months have not elapsed since the laying open to public inspection or the publication of the application;

(b) where no final decision has been taken in respect of a request filed under Section 22G or a notice of opposition filed under Section 25 and based on Sections 9, 10 or 11;

(c) where no final decision has been taken in respect of legal proceedings instituted with regard to the application, as shown by documents entered in the public registers of the Patent Office.

(2) Where a person other than the applicant is entitled to the patent or has a joint right to the patent by virtue of a final decision as referred to in paragraph (1)(b) or (c), withdrawal shall be deemed not to have taken place.

(3) The Patent Office shall make an entry of a withdrawal in the public registers and shall give notification of it in the Journal referred to in Section 25 as soon as the withdrawal takes effect vis-à-vis third parties.

22F. Any person may notify the Patent Office in writing of data concerning an application which has been laid open to public inspection. Insofar as the Patent Office considers that there are no objections to this data and to such other data in respect of the application being laid open to public inspection which it may otherwise acquire, the Patent Office shall, without delay, annex the data to the application which has been laid open to public inspection and notify the applicant thereof insofar as the said data have not been supplied by the applicant.

22G.–

(1) A party directly interested, within the meaning of Sections 9, 10 or 11 may request the Patent Office in writing, pursuant to the above-mentioned Sections, to determine that he is wholly or partly entitled to a patent or that he has a joint right thereto, after the application has been laid open to public inspection, but at the latest within four months after notification in the Journal referred to in Section 25 of a request as referred to in Section 22J. On filing a request to this effect a fee to be prescribed by Order in Council of the Realm shall be payable.

(2) A request as referred to in paragraph (1) shall be submitted in a statement accompanied by the reasons therefor and shall bear the signature of the person making the request or of a person representing him by written authorization. If the person making the request does not have his residence in the Kingdom, he shall be required to elect domicile with a representative in the Netherlands.

(3) After the filing of a request as referred to in paragraph (1), the applicant may not divide the application in question pursuant to Section 8A(1), the time limit referred to in Section 8A(2), first sentence, shall be suspended insofar as necessary and the procedure provided for in Sections 23 to 24A shall be

deferred until the decision in respect of the request has become final. After the filing of the request the Patent Office shall set up, without delay, a Special Division consisting of three members, who shall examine the request. This Division shall give the applicant an opportunity to take cognizance of the request and shall take a decision after hearing the applicant and the person who has made the request, or after having duly summoned them.

(4) A decision to be taken by virtue of paragraph (3) shall be given in a statement accompanied by the reasons therefor and the Patent Office shall inform the applicant and the person who made the request of it in writing. In respect of such a decision, Section 27 shall apply *mutatis mutandis*.

(5) Where it is decided that the person who has made the request is entitled to the patent or has a joint right thereto, such person shall to that extent replace the applicant.

(6) The Patent Office shall annex a request as referred to in paragraph (1) to the application that has been laid open to public inspection. As soon as the decision in respect of such a request has become final, the Patent Office shall also annex the documents relating to the consideration of the request to the application.

22H.–

(1) Where an interested party so requests in writing, the Patent Office may order without delay a preliminary hearing of witnesses with regard to facts which may be of importance to a decision which the Patent Office is to take in respect of an application that has been laid open to public inspection. On filing a request to that effect a fee to be prescribed by Order in Council of the Realm shall be payable.

(2) Section 22G(2) shall apply *mutatis mutandis*.

(3) The hearing shall take place before a Special Division of the Patent Office. The person who made the request and, where the request was made by a person other than the applicant, the applicant shall be afforded an opportunity to be present at that hearing.

22I.–

(1) Where the applicant so requests in writing, the Patent Office shall make a search of the state of the art in respect of that which is to be considered the subject matter of the application by virtue of the provisions by or under Section 5A. The exclusive rights applied for shall be taken into consideration in the order in which they occur in the application, and also the amendments concerning those rights introduced by the applicant insofar as they do not essentially change the content of the application. The Patent Office may omit such a search if it is not feasible as a result of lack of clarity of the application.

(2) After the application has been laid open to public inspection, any other person may file a written request for a similar search. The provisions of paragraph (1) shall apply to this search. However, in carrying out the search, the order in which the exclusive rights occur in the application may be deviated from, if so required. Upon the submission of a writ as provided for in Section 43A(3), the person who filed the request may demand that the search be directed in the first instance to that part of the patent that has been detailed in the writ.

(3) If the applicant so requests in writing, the Patent Office shall cause the application to be subjected to an international-type search as provided for in Article 15(5)(a), of the Patent Cooperation Treaty. Such a search shall be deemed to be a search of the state of the art as referred to in paragraph (1).

(4) Upon the filing of a request as provided for in paragraphs (1), (2) or (3), a fee to be prescribed by Order in Council of the Realm shall be payable. By Order in Council of the Realm it can be prescribed in which cases no fee shall be due or when fees already paid shall be refunded.

(5) A request as provided for in paragraphs (1), (2) or (3) shall bear the signature of the person who made the request or a person appointed as his representative by written authorization. If the person who has filed the request does not have his residence in the Kingdom, he shall be obliged to elect domicile with a representative in the Netherlands.

(6) The Patent Office shall notify the applicant of a request as provided for in paragraph (2). If or as soon as the application has been laid open to public inspection, the Patent Office shall make notification of a request as provided for in paragraphs (1), (2) or (3) in the Journal referred to in Section 25 and shall annex it to the application laid open to public inspection.

(7) The applicant shall be required, at the request of the Patent Office, to state within a time limit to be fixed by the Patent Office, the dates on which and the countries in which he filed a patent application for the same invention, to authorize the Patent Office in writing to make inquiries about those applications in those countries and to disclose the objections which, to the best of his knowledge, have been raised in respect of his application in those countries.

(8) In respect of the state-of-the art search, the Patent Office may request advice from the European Patent Office referred to in the European Patent Convention.

(9) The report of the state-of-the-art search or, if the search has not been made, the reason why it has not been made, shall be communicated in writing by the Patent Office to the applicant and, where paragraph (2) applies, to the person who filed the request referred to in that paragraph. In the communication the Patent Office may also indicate objections deriving from the provisions of this Act of the Kingdom, which could be raised against the granting of a patent on the application. If or as soon as the application has been laid open to public inspection, the Patent Office shall give notification of that communication in the Journal referred to in Section 25 and shall annex a copy of it to the application laid open to public inspection. If the application is withdrawn after a request as provided for in paragraph (2) has been filed and before the communication in respect of the search, the Patent Office shall inform the person who filed the request thereof in writing.

(10) Where the applicant or, after the application has been laid open to public inspection, another person so requests in writing, the Patent Office shall continue the search in respect of any part of the application concerning which, under or by virtue of the provisions of Section 25A, the search has not been performed or has not been completed. Upon the filing of such a request, a fee to be prescribed by Order in Council of the Realm shall be payable. Paragraph (4), second sentence, and paragraphs (5), (6), (7), (8) and (9) shall apply *mutatis mutandis*.

22J.–

(1) After the communication in respect of the search as provided for in Section 22I(9), the applicant or, after a copy of the communication has been annexed to the application which has been laid open to public inspection, any other person may request in writing that the Patent Office take a decision as to the grant of a patent on the application. Upon filing such a request, a fee to be prescribed by Order in Council of the Realm shall be payable.

(2) Section 22I(5) and (6) shall apply *mutatis mutandis*. Where the request has been made by a person other than the applicant and the application was withdrawn after the filing of that request and prior to the decision of the Examining Division as referred to in Section 24, the Patent Office shall so inform the person who filed the request in writing.

22K.–

(1) An application shall lapse where a request as provided for in Section 22J has not been filed within a period of seven years from the filing date of the application.

(2) Where, in respect of an application, a request has been made for the performance or continuation of a search as provided for in Section 22I(1), (2) or (10) before the expiry of the time limit referred to in paragraph (1), but the communication concerning the search as provided for in paragraph (9) of that Section has not been made the subject of a notification in the Journal referred to in Section 25 at least four months prior to expiry of the time limit, the time limit as provided for in paragraph (1) shall be extended up to four months following the date on which the Journal referred to in Section 25 mentions that communication. For applications referred to in Part III of this Chapter, an extension of four months' duration from the date of the communication concerning the search or the supplementary search, respectively, shall apply in the above-mentioned cases.

(3) A new application as referred to in Section 8A filed at least one month prior to the expiry of the time limit which, under paragraphs (1) or (2) is applicable in respect of the original application, shall lapse if a request as referred to in Section 22J has not been filed before the end of that time limit, provided that paragraph (2) shall apply *mutatis mutandis*.

(4) A new application as referred to in Section 8A filed less than one month before or after the expiry of the time limit applicable under paragraphs (1) or (2) to the original application shall lapse where, within one month following the date of filing, a request for the performance of a search as provided for in

Section 22I(1) or (2) has not been filed and, further, where within four months following the date of the notification in the Journal, referred to in Section 25, of the communication in respect of the search, referred to in Section 22I(9), a request as provided for in Section 22J has not been filed.

(5) The Patent Office shall make an entry in respect of the lapse in the public registers and shall give notification of it in the Journal referred to in Section 25.

23.–

(1) After the filing of a request as provided for in Section 22J, the Patent Office shall make an examination of the application as referred to in paragraph (3), below. Section 22I(7) and (8) shall apply *mutatis mutandis*.

(2) If the Patent Office deems the application not to be in conformity with the statutory requirements, the Patent Office shall so notify the applicant by a statement of the objections thereto and shall give him an opportunity to remedy the objections either by filing, within a reasonable time limit, a written defense in respect of the objections that have been raised or by supplementing or rectifying the original application.

(3) After completion of the examination referred to in paragraph (1), the Patent Office shall entrust the application with the documents relating thereto to an Examining Division designated by the Patent Office which shall deal with the application.

(4) After the applicant has been heard, or at least duly summoned, by the Examining Division and, where necessary, been given a reasonable opportunity to remedy the objections, the Examining Division shall pronounce its decision as soon as possible.

(5) Before deciding whether or not to publish the application, the Examining Division may request the Patent Office to make a further search as provided for in Section 22I(1).

(6) If the application is in conflict with the provisions made by or under Section 5A, this shall be so determined in a decision of the Division. This shall be done as soon as possible at the applicant's request. To this end the application, while still under examination, may, at the applicant's request, be placed in the hands of the Examining Division. Paragraph (4), above, and Section 24(2) shall apply *mutatis mutandis*. Pending the decision, the procedure in respect of the application shall, at the request of the applicant, or if the Examining Division considers it appropriate to do so, be suspended for the remainder.

24.–

(1) If the Examining Division deems that the application does not qualify for the complete or partial grant of a patent, it shall decide that the application shall not be published. In the contrary case, it shall decide that the application shall be published.

(2) The applicant shall be notified of the decision of the Examining Division without delay and, where the application is not wholly published, he shall be informed of the grounds for the decision. If any person other than the applicant has filed a request as provided for in Section 22J(1), he shall also be informed of the decision of the Examining Division without delay.

24A.–

(1) Within a period of three months following the final decision, the applicant may lodge an appeal with the Patent Office by filing a written notice of appeal stating the grounds therefor.

(2) Where a decision as provided for in Section 23(6) has been given before a final decision has been taken, the applicant may only lodge a separate appeal in respect of the former decision and this within three months.

(3) An Appeal Division of the Patent Office shall take a decision in respect of the appeal after the applicant has been heard, or at least duly summoned. Before taking the decision, the Appeal Division may request the Patent Office to make a further search as provided for in Section 22I(1).

(4) Members who were involved in the search in respect of the application as provided for in Section 22I(1), or in the examination of the application as provided for in Section 23(1) or who have taken part in the proceedings of the Examining Division, shall not be allowed to take part in the proceedings before the Appeal Division as provided for in the preceding paragraph.

(5) The applicant shall be notified of a decision of the Appeal Division without delay and with a statement of the grounds for the decision.

24B. The applicant and any person who is entitled under Section 12A to be mentioned in the patent as the inventor may file at the Patent Office, no later than the date on which the conditions stipulated in Section 25(1) have been satisfied, a joint written request for the latter person to be mentioned in the patent as the inventor. The request shall be dealt with by the Division that takes the decision as to publication. If this Division grants the request, it shall prescribe that the mention be inserted in the patent application to be published.

25.–

(1) The Patent Office shall publish an application by giving notification of the decisions taken to that effect in a Journal to be issued by the Industrial Property Office where no further appeal lies or where the applicant has waived his right to appeal and as soon as the applicant has furnished proof that a fee, the amount of which shall be prescribed by Order in Council of the Realm, has been paid to the Industrial Property Office. Within 14 days following the date on which the Journal is issued, the Patent Office shall enter the publication under a consecutive number in the relevant public register. The application shall be deemed to have been withdrawn if proof of payment has not been submitted, after a decision of the Examining Division to publish the application, on the date on which the decision becomes final, or after a similar decision of an Appeal Division, within one month following the date on which the decision is taken.

(2) On the issue date of the Journal in which notification is given of the decision to publish the application, the Patent Office shall lay the documents referred to in Sections 22C, 22I and 22J open to public inspection, if the laying open to public inspection as provided for in Section 22C has not yet been effected, and the Patent Office shall annex to these documents the decision to publish the application, the specification and drawings relating to the application in the form in which it was decided to publish them and the documents which have been exchanged in respect of the applications after the date of filing of the request referred to in Section 22J. The Patent Office shall furthermore make the above-mentioned specification and drawings available to the public as soon as possible.

(3) Within four months following the issue date of the Journal referred to in paragraph (1), any person may give notice of opposition to the grant of the patent in respect of which an application has been filed by filing with the Patent Office a written notice of opposition stating the grounds therefor, which notice of opposition shall clearly state the name and residence of the opponent and which shall bear his signature or that of a person representing him authorized in writing. The representative shall represent the opponent throughout the opposition proceedings, subject to replacement or revocation. If the opponent does not have his residence in the Kingdom, he shall be obliged to elect domicile in the Netherlands with a representative. The grounds for the opposition shall be based on the provisions of this Act of the Kingdom and may, insofar as they affect a directly interested party as provided for in Sections 9, 10 and 11, only be filed by him.

(4) Any person who is entitled under Section 12A to be mentioned in the patent as the inventor may request the Patent Office in writing either that he be mentioned as the inventor in the patent to be granted or that the mention of some person as the inventor in the published application be rectified or omitted in the patent to be granted. The preceding paragraph shall apply *mutatis mutandis*.

26.–

(1) Where notices of opposition or written requests under Section 25 or 32 have been filed, they shall be allocated to the Examining Division that has taken a decision on the publication of the application. The membership of the Examining Division shall be increased to three members if it consisted of one member. The Examining Division shall give the applicant an opportunity to take cognizance of the above-mentioned documents and shall decide on the full or partial grant of the patent and on the requests after expiry of the time limit as provided for in Section 25(3), and after having heard, or at least having duly summoned, the applicant, opponents and persons making the request. Where, as provided for in Section 25(4), a request is made for the rectification or omission of the mention of a person as the inventor in the published application, the Examining Division shall also afford the person mentioned as the inventor an opportunity to take cognizance of the request and shall not take a decision before having heard or at least duly summoned him to appear.

(2) Where opposition has been filed to the grant of a patent on the grounds that the opponent is entitled to a patent under Section 9 or 10, or that he is entitled to joint proprietorship under Section 11, either for the whole content of the original application or for such part of it as would be susceptible to the grant of a separate patent, the Examining Division may make an examination of the opposition; if the Examining Division finds that the opposition is justified, the Division shall grant to the opponent in whole or in part the patent applied for or the Examining Division shall grant him the joint proprietorship to which he is entitled, insofar as the opponent has informed the Patent Office of his desires in this regard before the decision. The decision shall not preclude the right of action pursuant to Section 53.

(3) The applicant, the opponents and the persons making the request shall be informed without delay of the decision taken by the Examining Division in a written statement accompanied by the reasons therefor.

(4) Where no notices of opposition or requests as provided for in Section 25 or 32 have been filed within the time limit specified in Section 25(3), the patent shall be deemed to have been granted in the form in which the application was published.

27.–

(1) Within three months following the date of the final decision the applicant, the opponents, the persons making the request and the person who has been mentioned as the inventor in the published application may lodge an appeal by filing with the Patent Office a notice of appeal stating the grounds therefor, which notice of appeal shall be signed by them or by a person appointed to represent them authorized in writing. The Patent Office shall give the other parties concerned an opportunity to take cognizance of the notice of appeal.

(2) After hearing, or at least having duly summoned the applicant, the opponents, the persons making the request and the person mentioned as the inventor in the published application, an Appeal Division of the Patent Office shall take a decision on the appeal. The provisions of Section 24A shall apply to the constitution of the Appeal Division and to the decision thereof.

28.–

(1) A patent granted in respect of a published application shall bear the date of and take effect, without prejudice to the provisions of Section 44, on the day following the date of expiry of the time limit referred to in Section 25(3) where no notices of opposition or requests have been filed or, where such notices of opposition or requests have been filed, on the day following the date of expiry of the time limit referred to in Section 27 where no appeal has been lodged, if all parties entitled to do so have waived the right to lodge an appeal or, where an appeal was lodged, on the day following the date on which the patent was granted by an Appeal Division.

(2) Within 14 days following that date, the Patent Office shall enter the grant of the patent in the register referred to in Section 25(1), and shall, as soon as possible, give notification thereof in the Journal referred to in the said Section. On the issue date of the Journal, the Patent Office shall make the specification and drawings relating to the application available to the public, in the form in which the patent was granted thereon, by way of patent specification, and the Patent Office shall annex these documents to the application laid open to public inspection, together with the decision to grant the patent and all the documents exchanged with regard to the application after publication.

(3) Within 14 days from the issue date of the Journal referred to in the preceding paragraph, the Patent Office shall provide the person to whom a patent has been granted with a certificate of his right.

(4) The Patent Office shall likewise within 14 days enter the refusal of an application in the register referred to in Section 25(1) where an appeal no longer lies or where refusal has been decided on by the Patent Office after the lodging of an appeal, and the Patent Office shall give notification thereof as soon as possible in the Journal referred to in the said Section.

29. Further rules for implementing the provisions of this Part and the following Parts shall be prescribed by Order in Council, which shall regulate *inter alia*:

- (a) the requirements with which applications and their accompanying documents shall comply;
- (b) [repealed]

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- (c) the entry of applications in the registers of the Patent Office under Section 22;
 - (d) the name, the form and the manner of publishing the Journal referred to in Section 25;
 - (e) the notification of the applications and the laying open to public inspection of the application with the documents pertaining thereto pursuant to Section 22C as well as the laying open to public inspection of documents pursuant to Sections 22F, 22G, 22I, 22J, 25 or 28;
 - (f) the form of the requests, notices of opposition and notices of appeal referred to in this Act of the Kingdom, the way in which the interested parties shall be notified thereof and the form of the certificate referred to in Section 28(3);
 - (g) *[repealed]*
 - (h) the cases in which an entry shall be made in the public registers of the Patent Office of the filing or the laying open to public inspection of documents other than applications;
 - (i) copies of which documents laid open for public inspection together with the application shall be made available to the public.

Part III

The Maintenance of Secrecy in Respect of the Content of Patent Applications

29A.—

(1) If the Patent Office is of the opinion that the maintenance of secrecy in respect of the content of a patent application may be in the interest of the defense of the Kingdom or its allies, the Patent Office shall notify the applicant thereof as soon as possible, but at the latest five months from the filing date of the application. Our Minister of Defense may give directions to the Patent Office with regard to the consideration of whether there is such an interest.

(2) At the same time as the notification is given, the Patent Office shall send a copy thereof and of the specification and drawings pertaining to the application to Our above-mentioned Minister.

(3) Where paragraph (1) applies, the laying open to public inspection and publication of the application shall be suspended.

29B.—

(1) Within eight months from the filing of a patent application as referred to in Section 29A, Our Minister of Defense shall notify the Patent Office whether the content of the application is to be kept secret in the interest of the defense of the Kingdom or its allies.

(2) Notification in the affirmative under paragraph (1) shall have a suspensive effect vis-à-vis the laying open to public inspection and the publication of the application for a period of three years from the date of that notification. Notification in the negative shall entail termination of such suspensive effect. Absence of any notification shall be deemed to be a notification in the negative.

(3) Our above-mentioned Minister may successively extend the term of suspension within six months preceding its expiry, for a period of three years by notifying the Patent Office that the content of the application is to be kept secret in the interest of the defense of the Kingdom or its allies.

(4) Our above-mentioned Minister may at any time notify the Patent Office that the content of the application need no longer be kept secret. Such a notification shall entail termination of the suspension.

(5) The Patent Office shall inform the applicant without delay of a notification under paragraphs (1), (3) or (4). The Patent Office shall also inform the applicant of the absence of a notification as referred to in paragraph (1) or (3).

(6) For as long as the suspension has not been terminated the Patent Office shall send Our above-mentioned Minister, at his request, copies of all the relevant documents exchanged between the Patent Office and the applicant.

(7) Nevertheless, the laying open to public inspection and the publication of the application shall not be effected, unless the applicant requests otherwise, until a period of three months has elapsed from the date of termination of the suspension.

29C.—

(1) Any person whose patent application has become subject to Section 29A or 29G shall, at his request, be awarded compensation by the State for any damage he has sustained by reason of the enforcement of Sections 29A and 29B or 29G.

(2) The amount of the compensation shall be determined upon termination of the suspension. If, however, the term of suspension has been extended by virtue of Section 29B(3), the amount of the compensation shall be determined, at the request of the applicant, in installments, the first relating to the period prior to the commencement of the first extension, the next to the period between two successive extensions and the last to the period from the commencement of the last extension to the termination of the suspension; the respective amounts shall be determined upon expiration of the relative periods.

(3) The amount of the compensation shall be determined, if possible, by the mutual consent of Our Minister of Defense and the applicant. If no agreement has been achieved within six months from the date of the expiry of the period to which the compensation relates, Section 34(9) shall apply *mutatis mutandis*, except for the provision concerning the deposit of security.

29D.–

(1) If an applicant requests that the content of a patent application be kept secret in the interest of the defense of some other country, or if the government of that country makes such a request, the Patent Office shall, provided that the applicant has stated in writing that he renounces any compensation for damages he might sustain by reason of the enforcement of this Section, send without delay a copy of that request and of the specification and drawings pertaining to the application as well as of the above-mentioned statement of renunciation to Our Minister of Defense. In such a case, the laying open to public inspection and the publication of the application shall be suspended. In the absence of a statement of renunciation, the Patent Office shall notify Our above-mentioned Minister thereof without delay.

(2) Within three months following the date of filing of the request, Our above-mentioned Minister may, provided that he has ascertained that secrecy has been imposed on the applicant by the country concerned and that the applicant was given permission by that country to file an application the subject matter of which has been made secret, notify the Patent Office that the content of the application is to be kept secret in the interest of the defense of that country.

(3) A notification by virtue of paragraph (2) shall have a suspensive effect vis-à-vis the laying open to public inspection and the publication of the application until Our above-mentioned Minister notifies the Patent Office that the content of the application need no longer be kept secret. Absence of the aforesaid notification shall entail termination of the suspension.

(4) Section 29B(6) and (7) shall apply *mutatis mutandis* with regard to an application as referred to in paragraph (1).

29E.–

(1) Where Our Minister of Defense is of the opinion that it is in the interest of the defense of the Kingdom for the State to use, put into practice or cause to be used or put into practice the subject matter of a patent application in relation to which Section 29A, 29B or 29D has been applied, he may take measures to that effect after notifying the applicant thereof. The notification shall contain a precise account of the acts the State must be able to perform or cause to be performed.

(2) The State shall compensate the applicant for the use or the putting into practice of the subject matter of the application pursuant to paragraph (1).

(3) The amount of this compensation shall be determined, if possible, by the mutual consent of Our above-mentioned Minister and the applicant. If no agreement has been achieved within six months following the date of the notification referred to in paragraph (1), Section 34(9) shall apply *mutatis mutandis*, except for the provision concerning the deposit of security.

29F. If the State itself is the proprietor of a patent application and if Our Minister of Defense notifies the Patent Office that its content is to be kept secret in the interest of the defense of the Kingdom or its allies, the laying open to public inspection and the publication of the application shall be suspended until Our above-mentioned Minister notifies the Patent Office that the content of the application need no longer be kept secret.

29G.–

(1) A European patent application whose applicant knows or should reasonably suppose that the content thereof is subject to secrecy in the interest of the defense of the Kingdom or of its allies shall be filed at the Patent Office.

(2) The Patent Office shall send without delay a copy of the specification and drawings pertaining to the application to Our Minister of Defense.

(3) Within a period not exceeding three weeks before expiration of the time limit referred to in Article 77(3) of the European Patent Convention, Our Minister of Defense shall notify the Patent Office whether the content of the application shall be subject to secrecy in the interest of the defense of the Kingdom or its allies.

(4) If notification under paragraph (3) has been effected in the negative or if no notification has been effected at all, the Patent Office shall forward the European patent application, with due observance of the time limit referred to in Article 77(3) of the European Patent Convention, to the European Patent Office referred to in that Convention.

(5) The Patent Office shall inform the applicant of any notification by virtue of paragraph (3) or of the absence thereof without delay.

Part IV
Conversion of European Patent Applications

29H.–

(1) A European patent application which complies with the provisions of Article 80 of the European Patent Convention and is deemed to have been withdrawn under Article 77(5) or 162(4) of the said Convention and which has been filed at the Patent Office as an annex to a regular request for conversion to a patent application in the Kingdom, hereafter to be referred to as a converted application, shall be considered a patent application, as referred to in Section 1A, directed to the said Patent Office and filed at the said Patent Office. A request for conversion shall be regular if it has been submitted in due time with due observance of the provision of Part VIII, Chapter I, of the European Patent Convention and has been transmitted to the Patent Office.

(2) The converted application shall be deemed to have been filed at the Patent Office on the filing date attributed to it under Article 80 of the European Patent Convention in conformity with Articles 61 and 76 of the said Convention.

29I.–

(1) Sections 20, 21A, 22(1), first sentence, and 22A(5) shall not apply to the converted application.

(2) The date of filing at the Patent Office, together with a serial number, shall be marked on the converted application.

(3) Proof of payment as specified in Section 21 shall be furnished for the converted application within a period of three months from the date of filing referred to in paragraph (2). If the European patent application has not been filed in the Dutch language, a translation into the Dutch language of the original documents of that application shall be submitted within the same period. The translation shall form part of the converted application; it shall be certified at the request of the Patent Office within a time limit to be prescribed by the Patent Office. The application shall lapse if the provisions of this paragraph have not been complied with in due time.

(4) The formal requirements prescribed by or under Section 22A shall not apply to the converted application if and to the extent that they differ from or are supplementary to what has been prescribed by or under the European Patent Convention; in such case that which was prescribed by or under the said Convention shall apply to the converted application.

(5) As soon as the applicant has complied with the provisions of paragraph (3), the Patent Office shall, in conformity with the provisions of paragraph (4), undertake an examination to determine whether the application satisfies the provisions prescribed by or under Section 22A and, this not being so, the Patent Office shall notify the applicant thereof as soon as possible stating the requirements that have not been

satisfied. The application shall lapse if, within four months following the date of the said notification, the stated requirements have not been satisfied without any further amendments.

(6) The notification and laying open to public inspection referred to in Section 22C shall be effected as soon as possible, but not before it has been ascertained that the provisions prescribed by or under Section 22A have been complied with or that a deficiency in this respect has been remedied in due time.

(7) The fees referred to in Section 22D(1) which are due before expiry of four months from the filing date of the converted application shall not be payable.

Part V

International Applications

29J.–

(1) An international application having an international filing date as referred to in Article 11 of the Cooperation Treaty and which has been submitted to the Patent Office in the manner and within the time limit designated in Article 22 or, where applicable, Article 39 of the Cooperation Treaty shall be deemed to be a patent application as specified in Section 1A addressed to that Patent Office and filed at that Patent Office.

(2) An application as referred to in paragraph (1) shall be deemed to be filed at the Patent Office on the day indicated by the international filing date as specified in Article 11 of the Cooperation Treaty.

29K.–

(1) Sections 20, 21A, 22(1), first sentence, and 22A(5) shall not apply to the international application.

(2) The date of filing at the Patent Office of the documents referred to in Sections 20 and 22 or Article 39 of the Cooperation Treaty, together with a serial number, shall be marked on the international application.

(3) Proof of payment as specified in Section 21 shall be submitted for the international application within the time limit referred to in Section 22(1) or (2), or, where applicable, Article 39(1) of the Cooperation Treaty. Within the same time limit a translation into the Dutch language of that application shall be submitted. The translation shall form part of the international application; it shall be certified at the request of the Patent Office within a time limit to be prescribed by that Patent Office. The application shall lapse if the provisions of this paragraph have not been complied with in due time.

(4) The Patent Office shall examine as soon as possible, unless the Patent Office has found that the application has lapsed by reason of Articles 24 or 39(2) of the Cooperation Treaty, whether the provisions of Section 22A(3) and (4) have been complied with. If they have not been complied with, the Patent Office shall notify the applicant thereof as soon as possible stating the requirements that have not been satisfied. The application shall lapse if the requirements stated have not been satisfied within four months from the date of that notification.

(5) The notification and the laying open to public inspection referred to in Section 22C shall be effected as soon as possible, but not before it has been ascertained that the provisions of Section 22A(3) and (4) have been complied with or that a deficiency in that respect has been remedied in due time. The report referred to in Article 18 of the Cooperation Treaty or the declaration referred to in Article 17(2)(a) of that Treaty and the report referred to in Article 35 of that Treaty shall also be laid open to public inspection. Section 43A shall apply only after the international application has been laid open to public inspection in accordance with Section 22C.

(6) If a request as specified in Section 22I(1), (2) or (10) is filed, the search to be carried out by the Patent Office shall serve as a supplement to the report provided for in Article 18 of the Cooperation Treaty. By Order in Council of the Realm it may be prescribed in which cases and to what extent such a supplementary search shall not be carried out and also in which cases and to what extent the fee referred to in Section 22I(4) or (10) shall be reduced. The communication referred to in Section 22I(9) shall, where applicable, name the amount of the refund to be made.

29L.–

(1) Decisions to be taken by the Patent Office as a designated Office pursuant to Article 25(2) of the Cooperation Treaty shall be taken by a Special Division of the Patent Office, this Division having heard or at least having duly summoned the applicant.

(2) The decisions referred to in paragraph (1) shall state the grounds on which they are based and shall be communicated without delay to the applicant by the Patent Office. Article 24A shall apply *mutatis mutandis* to these decisions.

(3) If it has been decided that the international filing date was wrongly refused or that the application was wrongly considered to have been withdrawn, the application shall be deemed to be an application filed under this Act of the Kingdom. Sections 29J and 29K shall not apply to such an application. The application shall be deemed to have been filed at the Patent Office on the day indicated by the filing date of the international application which should have been accorded or has been accorded; for the purposes of Sections 22(1) and 22A(5), the date on which the documents specified in Article 25(1) and (2) of the Cooperation Treaty have been received shall apply.

Chapter IIA

Provisions Governing European Patents

29M.–

(1) In conformity with the provisions of this Act of the Kingdom, European patents shall have the same effect in the Netherlands and shall be governed by the same legal provisions as patents granted under this Act of the Kingdom from the date on which the mention of the grant is published in accordance with Article 97(4) of the European Patent Convention.

(2) Where the provisions of Sections 32(1), 34(4), 47 and 52 govern European patents, the filing date shall be considered to be the filing date accorded to the European patent application which resulted in the grant of the European patent pursuant to Article 80 of the European Patent Convention in conformity with Articles 61 and 76 of that Convention.

29N.–

(1) The Patent Office shall, without delay, enter in the register as specified in Section 25(1) the publication, pursuant to Article 97(4) of the European Patent Convention, of the mention of the grant of a European patent, and shall make notification thereof in the Journal referred to in that Section.

(2) The Patent Office shall, without delay, enter in the register referred to in the preceding paragraph any opposition filed to a European patent, stating the date of filing of the opposition and the decisions of the European Patent Office relative thereto. The Patent Office shall make notification thereof in the Journal referred to in the preceding paragraph.

29O. The proprietor of a European patent who does not have his domicile in the Netherlands shall be obliged to elect domicile in this country and to notify the Patent Office thereof in writing, which election of domicile shall remain in force subject to a change of the domicile elected, which change shall be notified to the Patent Office in writing. If on the date of entry in the public register referred to in Section 29N(1) the obligation specified above has not been met, the Patent Office shall notify the proprietor of the patent thereof within 14 days, stating the date of this entry. The patent shall lapse if the obligation referred to in the first sentence has not been met within a period of three months from this date. The Patent Office shall enter this lapse in the above-mentioned register and shall make notification of it in the Journal referred to in Section 25(1).

29P.–

(1) Within a time limit to be prescribed by Order in Council, any person to whom a European patent has been granted must supply the Patent Office with a translation into the Dutch language of the text of the patent specification. Furthermore, a fee shall be payable the amount of which and the time limit within which payment shall be effected shall be prescribed by Order in Council. The translation shall be certified by a representative admitted as such in accordance with Section 18A. The translation and the certification of the translation shall satisfy formal requirements to be prescribed by Order in Council.

(2) If on receipt within the time limit referred to in paragraph (1) the formal requirements referred to in the last sentence of the said paragraph have not, in the opinion of the Patent Office, been satisfied, the Patent Office shall notify the proprietor of the patent without delay with a statement of the requirements that have not been satisfied and of the time limit within which the deficiencies that have been found may be remedied.

(3) On receipt of the translation in the proper form the Patent Office shall, without delay, enter it in the register referred to in Section 25(1), make notification of it in the Journal referred to in that paragraph and lay the translation open to public inspection at the Industrial Property Office.

(4) The European patent shall be deemed not to have had, *ab initio*, the effect referred to in Section 29M if:

(a) within the time limit referred to in paragraph (1), the translation has not been received by the Patent Office or the fee payable by virtue of that paragraph has not been paid; or

(b) within the time limit referred to in paragraph (2), the requirements which have been stated have not yet been satisfied.

(5) If the European patent shall be deemed, by virtue of paragraph (4) not to have had, *ab initio*, the effect referred to in Section 29M, the Patent Office shall, without delay, make an entry thereof in the register referred to in paragraph (3) and shall make notification of it in the Journal referred to in that paragraph.

(6) The preceding paragraph shall apply *mutatis mutandis* if the European patent has been amended during the opposition proceedings.

(7) The proprietor of the patent may supply the Patent Office with a corrected translation at any time, for which a fee shall be payable the amount of which shall be prescribed by Order in Council. Paragraphs (1), third and fourth sentences, (2) and (3) shall apply *mutatis mutandis*.

29Q. Section 17A shall apply *mutatis mutandis* if the proprietor of a European patent-despite his having exercised all due care required under the circumstances-was unable to observe the time limit prescribed in Section 29O or a time limit prescribed by virtue of Section 29P.

Chapter III Legal Effects of the Patent

Part I Rights and Obligations of the Proprietor of the Patent

30.-

(1) Subject to the provisions of Sections 31 to 34B, a patent shall confer on its proprietor the sole right:

(a) to make, use, put on the market or resell, hire out or deliver the patented product or deal in any other way, in or for his business, in the patented product or to offer, import or stock it for any of those purposes;

(b) to apply the patented process in or for his business or to use, put on the market, or resell, hire out, deliver the product obtained directly as a result of the application of the patented process, or deal in any other way, in or for his business, in the product or to offer, import or stock it for any of those purposes, with the exception of any product excluded from the grant of a patent as a result of Section 3(2).

(2) The sole right shall be determined by the contents of the claims of the patent specification, the description and the drawings serving to interpret those claims.

(3) The sole right shall not extend to acts exclusively done for experimental purposes relating to the subject matter of the patented invention, including the product obtained directly as a result of applying the patented process.

(4) If a product as referred to in paragraph (1)(a) or (b) has been put on the market lawfully in the Kingdom, or, where a European patent is concerned, in the Netherlands, the person who has obtained such

product or the subsequent proprietor shall not contravene the patent by using, selling, hiring out or delivering the product or by dealing in any other way, in or for his business, in the product, or by offering, importing, or stocking it for any of those purposes. A product as specified in paragraph (1)(a) or (b) which was manufactured by a business prior to the date of publication, in accordance with Section 25, of the application that resulted in the grant of the patent, or, where a European patent is concerned, prior to the date of publication, in accordance with Article 97(4) of the European Patent Convention, of the mention of the grant of the European patent, may be used or continued to be used on behalf of that business, notwithstanding the patent.

30A.–

(1) A European patent shall be deemed not to have had, as from the outset, all or part of the effects specified in Sections 30, 43B and 44A to the extent that the patent has been wholly or partially revoked during opposition proceedings.

(2) The retroactive effect of the revocation shall not effect:

(a) a decision relating to acts in contravention of the sole right of the proprietor of the patent as specified in Section 30 or to acts as specified in Sections 43B and 44A which has acquired the authority of a final decision and has been enforced prior to the revocation;

(b) any contract concluded prior to the revocation to the extent that it has been performed prior to the revocation; on grounds of equity, repayment may be claimed of sums paid under the contract, to the extent justified by the circumstances.

(3) For the purposes of paragraph (2)(b), the conclusion of a contract shall also be deemed to include a license originating in a manner different from that designated in Section 33(2), 34A or 34B.

31. The sole right of the proprietor of the patent shall not extend to:

(a) the use, on board vessels of other countries, of the subject matter of his patented invention in the body of the vessel, in the machinery, the rigging, the tackle and other accessories thereof, when such vessels are in the waters of the Kingdom temporarily or accidentally, provided that the invention is used for the actual needs of the vessel only;

(b) the use of the subject matter of his patented invention in the construction or operation of aircraft or land vehicles or of the accessories of such aircraft or land vehicles belonging to other countries, when such aircraft or land vehicles are in the Kingdom temporarily or accidentally;

(c) acts specified in Article 27 of the Chicago Convention on International Civil Aviation of December 7, 1944, provided that those acts are relative to an aircraft of a State-other than the Kingdom-mentioned under (c) of that Article.

32.–

(1) Any person who has already made or applied or who has commenced to put into practice his intentions to make or apply, in or for his business, the subject matter of a patent application filed by somebody else, within the Kingdom or, where a European patent is concerned, in the Netherlands, on the filing date of that application or, if the applicant has a right of priority by virtue of Section 7(1) or Article 87 of the European Patent Convention, on the filing date of the application conferring the right of priority, notwithstanding the patent, shall continue to have the right to do the acts referred to in Section 30(1), this right being based on prior use, unless he has obtained his knowledge from matter already made or applied by the applicant or from the applicant's descriptions, drawings or models.

(2) Paragraph (1) shall apply *mutatis mutandis* to that part of the continental shelf contiguous to the Netherlands, the Netherlands Antilles or Aruba-or, where a European patent is concerned, contiguous to the Netherlands-to which the Kingdom has sovereign rights, but solely to the extent that such acts are directed at and are performed during the exploration or the exploitation of natural resources as referred to in Section 44B.

(3) Within the time limit provided for in Section 25(3) or, where a European patent is concerned, within the time limit referred to in Article 99(1) of the European Patent Convention, any person who considers that he has a right based on prior use may request the Patent Office to provide him with a certificate in respect of the acts, done by him in fact, on the strength of which he would be entitled to the

right as referred to in paragraph (1). Where proof of those acts has been provided to the satisfaction of the Patent Office, the Patent Office shall issue the certificate to him. The acts done by him in fact stated therein shall thereby be taken to be established unless evidence to the contrary is given. An entry shall be made of the issue of such a certificate in the public registers of the Patent Office.

(4) A request for a certificate as referred to in the preceding paragraph shall be made in a statement accompanied by the reasons therefor, shall give in a clear manner the name and residence of the person making the request and shall bear the signature of that person or of his representative authorized in writing. The representative, who shall satisfy the conditions to be prescribed by Order in Council for his admission as such, shall represent the person making the request in all matters concerning the request, subject to replacement or revocation. Where the person making the request is not domiciled in the Kingdom, he shall be obliged to elect domicile in the Netherlands with a representative.

(5) The right referred to in paragraph (1) may only be transferred to other persons with the business.

33.–

(1) The right to perform acts prohibited to any person other than the proprietor of the patent by virtue of Section 30 may be acquired from the proprietor by means of a license. That right shall extend to all the acts referred to in the above-mentioned Section and shall continue to be in force for as long as the patent has effect, except if a less extensive right has been granted under the license.

(2) A license shall be created by an agreement, by an accepted testamentary disposition or, in accordance with Section 34, by a decision taken by Our Minister of Economic Affairs or by the Patent Office. A license created by an agreement or an accepted testamentary disposition shall have effect vis-à-vis third parties after an entry of its title has been made in the public registers of the Patent Office. For this entry a fee, to be prescribed by Order in Council of the Realm, shall be payable.

(3) Where the right to remuneration in respect of a license, pursuant to the provisions of Section 51(8) or 53(4), is transferred, the successors in title shall be entitled to a part of the total remuneration paid for and to be paid for the license in proportion to the time during which the license should continue to have effect under normal circumstances. If the amount still to be paid by the licensee is insufficient to provide the successor in title with that which is due to him, the latter may seek redress from the former for the deficiency.

34.–

(1) Our Minister of Economic Affairs may, if he considers it in the public interest, grant a license under a patent, the content of which shall be specified accurately by him, to a person designated by him. Before giving his decision Our Minister shall, unless this is not compatible with the speed required in the matter, ascertain whether the proprietor of the patent is willing to grant the license voluntarily and on reasonable terms. To this end, he shall give the proprietor of the patent an opportunity to express his sentiments on the matter in writing and, at his request, orally as well. The decision shall state the grounds on which it is based and shall be sent to the proprietor of the patent by registered letter. In his decision, Our Minister may impose upon the licensee the obligation to deposit security within a certain time limit. An appeal, lodged by the proprietor of the patent, shall lie from the decision to Us within a month after the dispatch of the decision. The appeal shall have suspensive effect, unless the decision of Our Minister provides otherwise in consequence of the speed required in the matter; if in the latter case the decision is revoked in whole or in part on appeal, the consequences thereof shall be provided for at the same time.

(2) Where neither the proprietor of a patent nor any other person who was granted a license has, in the Kingdom or in any other country to be designated by Order in Council of the Realm, after the expiration of three years from the grant of the patent, an industrial establishment in operation in which the product concerned is being made or the process concerned is being applied in good faith and on a sufficient scale, the proprietor of the patent shall be obliged to grant a license required for having such an establishment in operation, unless valid reasons are shown to exist for the absence of such an establishment. This obligation shall have effect for the proprietor of a European patent if after the expiration of three years from the date on which the mention of the grant of the European patent was published in accordance with Article 97(4) of the European Patent Convention, an industrial establishment as referred to above is not in operation in the Netherlands or in another country to be designated by Order in Council of the Realm.

(3) Paragraph (2) shall not apply if the proprietor of a patent or any other person who has been granted a license has an industrial establishment in operation in that part of the continental shelf contiguous to the Netherlands, the Netherlands Antilles or Aruba-or, where a European patent is concerned, contiguous to the Netherlands-to which the Kingdom has sovereign rights, in which, in good faith and on a sufficient scale, acts are done as referred to in that paragraph, provided that such acts are directed at and are performed during the exploration or the exploitation of natural resources as referred to in Section 44B.

(4) The proprietor of a patent shall be obliged at any time to grant a license required for the working of a patent granted in respect of an application which has the same or a later filing date or, where there is a right of priority attaching to the application, date of priority; the proprietor of the patent, however, shall only be obliged to grant a license required for the working of a European patent after the expiry of the time limit for filing an opposition to the European patent or after the opposition proceedings thus instituted have been terminated. Such a license shall not extend to anything beyond that which is necessary for the working of the patented invention of the licensee. The latter shall be obliged to grant a reciprocal license under his patent to the proprietor of the other patent.

(5) The license referred to in paragraph (2) or (4) shall be granted at the request of the party concerned by the Patent Office if the Patent Office determines that the obligation to grant it has not been met. The request for the grant of a license as referred to in the first sentence of paragraph (4) may also be filed by a person whose patent application was published under Section 25(1) or by the proprietor of a European patent before expiration of the time limit for the filing of an opposition to the European patent or before termination of opposition proceedings so instituted. The proprietor of a patent under which a license has been requested may file the request for a reciprocal license as referred to in the last sentence of paragraph (4) from the moment the request for a license relating to his own patent has been made. The provisions of Section 32(4) shall apply *mutatis mutandis* to those requests. They shall be entered in the public registers of the Patent Office.

(6) A request as referred to in the preceding paragraph shall be examined by a Special Division in the first instance. This Division shall give the other party concerned an opportunity to take cognizance of the request and shall deliver a decision after hearing both parties, or at least after having duly summoned them to appear. If the request for the grant of a license as referred to in the first sentence of paragraph (4) has been filed in accordance with the second sentence of paragraph (5) and, moreover, if a notice of opposition or a request as referred to in Section 25 or 32 has been filed in respect of the application or a request as referred to in Section 32 in respect of the European patent, the requests, the above-mentioned notices of opposition and the application for the grant of a reciprocal license as referred to in the last sentence of paragraph (4) shall be examined jointly by the Special Division, insofar as possible in connection with the filing dates of those documents. A license applied for on the basis of the first sentence of paragraph (4) shall not be granted prior to the grant of a patent relating to the application filed by the person who made the request; where the license is required for the working of a European patent, such license may not be granted prior to the expiration of the time limit for the filing of an opposition to the European patent or prior to the termination of opposition proceedings so instituted. Section 27 shall apply *mutatis mutandis*.

(7) The decision of the Patent Office, to be contained in a statement accompanied by the reasons therefor, shall furnish a precise definition of the license granted, which definition may differ from the subject matter of the request. In the decision, the Patent Office may require the licensee to deposit security within a fixed time limit. A license granted under paragraph (2) shall be non-exclusive and may not be transferred, not even by means of the grant of sub-licenses, other than together with that part of the business in which the license is being worked. A license granted under paragraph (4), first or third sentence, shall not lapse where the patent for which the license has been granted has lapsed as a result of the expiry of the time limit referred to in Section 47 or where the patent has been revoked in whole or in part or has been claimed successfully. A reciprocal license granted pursuant to paragraph (4), last sentence, for a European patent shall not lapse if that patent has been revoked.

(8) A decision as specified in paragraph (1) or (7) shall be entered in the public registers of the Patent Office at the request of the licensee. Where security is required to be furnished, the entry shall not be made before that requirement has been met. For the making of the entry, a fee shall be payable the amount of which shall be prescribed by Order in Council of the Realm. The license shall not enter into effect before the making of the entry, but shall subsequently also have effect with regard to persons who became entitled to the patent after the making of the entry in respect of the request specified in paragraph (5). However, a

license, in respect of which an entry has been made, granted on the basis of the provisions of paragraph (4), shall have retroactive effect from the date on which an entry in respect of the request was made.

(9) After the grant of a license pursuant to the preceding paragraphs, the parties concerned may request the Patent Office in writing to fix the amount of remuneration payable to the proprietor of the patent. The Patent Office shall comply with that request. The decision of the Patent Office shall be binding on the parties concerned. Where the parties do not address such a request to the Patent Office and where they cannot settle the amount of remuneration by agreement, the remuneration shall, upon a suit instituted by the most diligent party, be fixed by the court, which may impose upon the licensee the obligation to deposit security within a specified time limit or which may confirm or amend the security fixed pursuant to the provisions of paragraph (1) or (7).

34A.–

(1) Where We deem it in the interest of the defense of the Kingdom, We may, upon the joint recommendation of Our Minister directly concerned and of Our Minister of Economic Affairs, order that the State shall be authorized to perform itself or cause others to perform acts, to be specified precisely by Our Order, to which the proprietor of a patent to be designated by Us has the exclusive right to perform pursuant to Section 30. The authorization shall apply during the whole term in which the patent is in force, unless a shorter term has been determined by Our Order.

(2) Upon the entering into effect of Our Order, Our Minister directly concerned shall fix, by agreement with the proprietor of the patent, the remuneration payable to the latter by the State. If Our Minister has not reached an agreement with the proprietor of the patent within six months from the date of the entry into force of Our Order, Section 34(9), except for the provisions concerning the deposit of security, shall apply *mutatis mutandis*.

34B.–

(1) Subject to Section 33(2), first sentence, a license shall be obtained by:

(a) a decision of the Arbitration Committee as referred to in Article 20 of the Treaty establishing the European Atomic Energy Community (EURATOM);

(b) a decision of the Patent Office pursuant to Article 21 of the above-mentioned Treaty.

(2) In respect of a license obtained by a final decision as specified in paragraph (1)(a), Section 33(2), second and third sentences, shall apply *mutatis mutandis*.

(3) In respect of a decision as referred to in paragraph (1)(b), Section 34(5), first, fourth and fifth sentences, (6), first, second and last sentences, (7) and (8), first, second and third sentences, shall apply *mutatis mutandis*. In respect of a license granted by virtue of such a decision, Section 34(8), fourth sentence, and (9), last sentence, shall apply *mutatis mutandis*.

(4) A license as referred to in paragraph (1) shall be without effect for the Netherlands Antilles and Aruba.

35.–

(1) A renewal fee for a patent shall be due annually on the last day of the month in which the application that resulted in the grant of the patent was filed, or on the last day of the month in which the application shall be deemed to have been filed under Section 8A, and the amount of that fee shall be prescribed by Order in Council of the Realm. If the patent was granted in the same month as that in which the application that resulted in the grant of that patent was filed, the fee due for the first time may be paid on the last day of the following month.

(2) With regard to a European patent, a renewal fee as referred to in paragraph (1) shall be due annually, but only on expiry of the year referred to in Article 86(4) of the European Patent Convention, on the last day of the month in which the European patent application that resulted in the grant of the patent was filed, pursuant to Article 80 of the European Patent Convention in conformity with Article 61 or 76 of that Convention. If the fee falling due for the first time would be payable within a period of two months from the date of publication of the mention of the grant of the European patent in accordance with Article 97(4) of the European Patent Convention, the fee may be paid on the last day of the month containing the expiration of that period.

(3) The payments shall be made to the Industrial Property Office. Payment before the due date shall be permitted.

(4) For payments after the due date additional fees shall be due, the amount of which shall be prescribed by Order in Council of the Realm.

36. [Repealed]

Part II
The Patent as an Object of Property

37.–

(1) The patent and the right to a patent as provided for in Chapter I of this Act of the Kingdom shall be assignable or otherwise transferable in full or joint ownership.

(2) They shall be deemed to be personal property, subject to the special provisions of this Act of the Kingdom.

(3) The assignment and other transfer of the patent or of the right arising from the patent application may be the subject of an entry in the registers of the Patent Office. For the making of such an entry, a fee shall be payable to be prescribed by Order in Council of the Realm.

38.–

(1) An assignment of the patent, as well as of the right arising from the patent application, shall be effected by means of an instrument containing a declaration of the proprietor of the patent that he assigns the patent or the right arising from the patent application to the assignee and a declaration of the assignee that he accepts the assignment.

(2) Any reservation relating to the assignment must be defined in the instrument; in the absence of any such reservation, the assignment shall be deemed to be unrestricted.

(3) The assignment shall take effect vis-à-vis third parties only after an entry has been made in respect of the instrument in the relative register of the Patent Office. Both parties shall have an equal right to have the entry made in the register.

39.–

(1) Where several persons are jointly entitled to the patent, their interrelationship shall be governed by that which has been fixed by agreement among themselves.

(2) Where there is no agreement or where the agreement does not state otherwise, any person entitled to the patent shall have the right to perform the acts referred to in Section 30 and to bring proceedings in respect of any such act as well as in respect of acts referred to in Section 44A(1) and (2) performed by a person not having this right, pursuant to Sections 43 to 45, but a license or permission as referred to in Section 44A(2) may only be granted by common consent of the persons entitled to the patent.

(3) With regard to the payment of the fee referred to in Section 35, the persons entitled to the patent shall be bound separately.

40.–

(1) A lien on a patent shall be established by a deed entered in the public registers of the Patent Office. It shall only be valid if the amount for which it was granted is mentioned in the deed and it shall continue to have effect even where the patent is alienated.

(2) The lienor shall be required, by means of a declaration bearing his signature to be sent to the Patent Office for registration, to elect domicile in The Hague. If domicile has not been elected in this way, the Industrial Property Office shall be deemed to be the elected domicile.

(3) Stipulations of the lien concerning the granting of licenses after registration shall take effect, vis-à-vis third parties as well, from their date of entry in the public registers of the Patent Office. Stipulations concerning remuneration for licenses granted prior to registration shall take effect vis-à-vis the licensee after a writ has been served on him.

(4) An entry shall be made in the public registers of the Patent Office of deeds from which it appears that the lien has ceased to exist or has ceased to have effect.

41.–

(1) In the case of the attachment of a patent, the records of the attachment shall be entered in the public registers of the Patent Office.

(2) When the entry has been made, the proprietor of the patent against whom the attachment was levied shall not alienate or encumber the patent so attached or grant licenses under it; rights established after the entry has been made shall not be invoked against the person levying the attachment. License fees not paid prior to the making of the entry shall be included by right in the attachment after a writ has been served on the licensee. Those fees-in case the attachment serves the preservation of a right, after the court has confirmed the attachment by a final judgment-shall be payable, together with the selling price of the patent, to the person levying the attachment for apportionment to the creditors in order of precedence.

(3) Upon discontinuation of the attachment, the title furnishing proof of such discontinuation shall be entered in the public registers of the Patent Office. Where the attachment serves the preservation of a right, Sections 770e to 770g of the Netherlands Code of Civil Procedure shall apply, it being understood that the provisions of Section 770g in respect of the Recorder of Mortgages shall apply to the Patent Office.

42.–

(1) The sale of a patent given in lien or of a patent on which attachment has been levied shall be effected publicly before a notary public.

(2) The creditor who institutes proceedings for the sale must serve notice of the date of the sale at least 30 days before that date to all the lienors or judgment creditors then registered at their elected domicile.

(3) The title furnishing proof of the sale shall be entered in the public registers of the Patent Office.

(4) The purchaser may demand, where the sale has been effected in accordance with paragraphs (1) and (2), that the patent be disencumbered from the liabilities of the lien in excess of the purchase price, in conformity with the provisions in Sections 1256 to 1263 of the Netherlands Civil Code and Sections 551 to 562 of the Netherlands Civil Code of Procedure, it being understood that liens shall be deemed to be mortgages and the registers of the Patent Office shall be deemed to be the registers of the Recorder of Mortgages for the purposes of those provisions.

Part III
Enforcement of the Patent

43.–

(1) The proprietor of a patent may enforce his patent vis-à-vis any person who, without being entitled to do so, performs any of the acts referred to in Section 30(1).

(2) Damages may be claimed only from a person who performs such acts being aware that he has no right to do so. In any event, a person shall be deemed to have been so aware if the infringement was committed after the expiry of 30 days following the service of a writ indicating the acts done in contravention of the patent.

(3) In lieu of a claim for damages, the proprietor of a patent may claim that the defendant be ordered to surrender the profits derived by him from the infringement and to give an accounting of such profits; if the court determines, however, that the circumstances of the case do not justify the making of such an order, it may order the defendant to pay damages.

(4) The proprietor of a patent may institute actions for damages or for the surrendering of profits on behalf of himself, licensees or lienors, or on behalf of licensees or lienors only, without prejudice to the

right of the latter parties to intervene in the action brought by the proprietor of the patent, whether or not brought exclusively or also on their behalf, in order to obtain direct indemnification for their losses or in order to be awarded a proportional share of the profits to be surrendered by the defendant. Independent actions may only be brought by licensees and lienors, and writs as referred to in paragraph (2) may only be caused to be served with a view to such actions, if the proprietor of the patent has granted the entitlement to do so.

(5) Where proceedings are brought for the enforcement of a patent relating to a process for the manufacture of a new product, it shall be assumed that the product in question has been manufactured by using the patented process, unless the defendant can establish the plausibility of the contrary. The contents of patent applications as provided for in Section 2(3) and (4) shall not be taken into consideration in a judgment relating to the novelty of a product.

43A.–

(1) Subject to the provisions of paragraph (4), the proprietor of a patent may demand reasonable compensation from a person who, in the period between the laying open to public inspection, in accordance with Section 22C, of the application which has resulted in the grant of the patent and the publication under Section 25 of that application or of the divisional application related thereto under Section 8A, performed acts as specified in Section 30(1), insofar as the proprietor of the patent has acquired the exclusive rights thereto.

(2) Subject to the provisions of paragraph (4), the proprietor of a patent may also demand reasonable compensation from a person who, after the publication as specified in paragraph (1), has performed acts, as referred to in that paragraph, with regard to products that were put on the market during the period mentioned in that paragraph. The proprietor of the patent may demand a similar compensation from any person who, after the publication, has used products as specified in Section 30(1), (a) or (b), for his business that were manufactured in his business in the period referred to in paragraph (1).

(3) The compensation referred to in paragraphs (1) and (2) shall only be due for acts performed after the expiry of 30 days following the date on which the party concerned was informed, by means of a writ indicating precisely which part of the patent application relates to such acts, of the right to which the proprietor of the patent is entitled by virtue of this Section.

(4) The right to which the proprietor of a patent is entitled by virtue of this Section shall not extend to acts performed by a person entitled to do so by virtue of Section 32 or of an agreement, nor shall it extend to acts with regard to products that were put on the market either prior to the laying open to public inspection of the patent application in question under Section 22C or thereafter, by the applicant or a person entitled to do so as specified above.

43B.–

(1) The proprietor of a European patent may, subject to the provisions of paragraph (4), demand reasonable compensation from any person who, in the period between the publication, pursuant to Article 93 of the European Patent Convention, of the application which has resulted in the grant of the patent and the publication, referred to in Article 97(4) of that Convention, of the mention of the grant of the European patent in respect of the said application or in respect of a divisional application related thereto by virtue of Article 76 of the said Convention, performed acts as specified in Section 30(1), insofar as the proprietor of the patent has acquired the exclusive rights thereto and such acts are within the scope of the last filed published claims.

(2) Subject to the provisions of paragraph (4), the proprietor of a European patent may also demand reasonable compensation from any person who, after the publication referred to in paragraph (1) of the mention of the grant of the European patent, has performed acts as referred to in that paragraph with regard to products that were put on the market during the period specified in that paragraph. The proprietor of the patent may demand a similar compensation from any person who, after the publication referred to in paragraph (1), has used products as specified in Section 30(1), (a) or (b), for his business that were manufactured in his business in the period referred to in paragraph (1).

(3) The compensation referred to in paragraphs (1) and (2) shall only be due for acts performed after the expiry of 30 days following the date on which the party concerned was informed by means of a writ of the right to which the proprietor of the patent is entitled by virtue of this Section. This writ, indicating

precisely which part of the patent application relates to such acts, shall be accompanied by service of notice of a translation into the Dutch language of the claims as contained in the publication of the European patent application in accordance with Article 93 of the European Patent Convention. If such translation was laid open to public inspection at the Industrial Property Office prior to the serving of the writ and that Office made notification of it in the Journal referred to in Section 25(1), serving notice of the translation may be omitted, provided that mention is made in the writ of the fact that the translation has been laid open to public inspection.

(4) The right to which the proprietor of a patent is entitled by virtue of this Section shall not extend to acts performed by a person entitled to do so by virtue of Section 32 or of an agreement, nor shall it extend to acts with regard to products that were put on the market either prior to the publication of the application under paragraph (1), in accordance with Article 93 of the European Patent Convention, or thereafter by the applicant or a person entitled to do so as specified above.

(5) The Patent Office shall, as soon as possible, provide for the laying open to public inspection as specified in paragraph (3) and to the notification in respect of translations which the Patent Office has received.

44.–

(1) An action for compensation or for the surrendering of profits derived from infringement as specified in Section 43 may also be based on acts done prior to the date of the patent referred to in Section 28(1), but after publication in accordance with Section 25 of the application that has resulted in the grant of the patent.

(2) A writ as referred to in Section 43(2) may be served at the request of a person whose patent application has been published in accordance with Section 25, but in respect of whose application a final decision has not yet been taken.

44bis. [Repealed]

44A.–

(1) The proprietor of the patent may make the same demands which are at his disposal in the maintenance of his patent from any third party who, in the Kingdom, or where a European patent is concerned, in the Netherlands, offers or delivers in or for his business means in respect of an essential part of the invention to other persons than those who, by virtue of Sections 32 to 34B are empowered to apply the patented invention, for the application of the patented invention in the Kingdom, or where a European patent is concerned, in the Netherlands, provided that that third party knows or that it is evident considering the circumstances that those means are suitable and destined for that application.

(2) Paragraph (1) shall not apply if the offer or the delivery takes place with the consent of the proprietor of the patent. Nor shall that paragraph apply if the delivered or offered means are products which are generally obtainable in commerce, unless that third party incites the person to whom he delivers to perform acts specified in Section 30(1).

(3) Section 43(4) shall apply *mutatis mutandis*.

44B.–

(1) The rights and obligations arising out of Sections 30 to 44A shall also apply in, on and above that part of the continental shelf contiguous to the Netherlands, the Netherlands Antilles or Aruba-or, where a European patent is concerned, contiguous to the Netherlands-to which the Kingdom has sovereign rights, but solely to the extent that such acts are directed at and are performed during the exploration or the exploitation of natural resources.

(2) For the purposes of paragraph (1) the term “natural resources” is used to refer to: the mineral and other non-living resources of the seabed and subsoil, together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

45.–

(1) Any person who deliberately infringes the right of the proprietor of a patent by performing any of the acts referred to in Section 30(1) shall be liable to imprisonment for a term not exceeding three months or to a fine not exceeding 1,500 guilders.

(2) If the offender commits the offense within a period of less than five years from the date on which a former conviction for a similar offense became final, the maximum penal sanctions referred to in the preceding paragraph shall be doubled.

(3) On conviction of the offender, the court may order that its judgment be made public.

(4) Where objects have been declared forfeit, the persons entitled to the patent may demand that those objects be surrendered to them by filing a request to that effect with the Clerk of the Court within eight days from the date on which the judgment has become final.

(5) The penal offenses referred to in this Section shall be deemed to be misdemeanors.

46.–

(1) Any person who applies words or symbols to any goods in such a way as to represent falsely either that protection has been granted or applied for in respect of those goods or that protection under this Act of the Kingdom has been granted or applied for shall be liable to detention for a term not exceeding three months or to a fine not exceeding 1,500 guilders.

(2) Any person who sells, offers to sell, delivers, stocks for sale in the Kingdom or imports into the Kingdom any goods to which words or symbols have been applied in such a way as to represent falsely either that protection has been granted or applied for in respect of those goods or that protection under this Act of the Kingdom has been granted or applied for shall be liable to the same penal sanctions as those specified in the preceding paragraph.

(3) The offenses made punishable under this Section shall be deemed to be transgressions. Section 45(2) and (3) shall apply *mutatis mutandis*.

Chapter IV

Term of the Patent.

Claiming the Right to the Patent

47. The patent shall remain in force until the end of a period of 20 years beginning on the date of the filing of the application that has resulted in the grant of the patent, subject to the provisions laid down in the Sections below.

48.–

(1) A patent shall lapse if the proprietor of the patent surrenders it.

(2) Surrender shall be effected by means of an instrument entered in the public registers of the Patent Office and notified in the Journal specified in Section 25. No entry shall be made as long as there are any persons who, by virtue of documents entered in the said registers, have acquired rights in the patent or in licenses thereunder or who have brought proceedings relating to the patent, and who have not consented to the surrender.

49.–

(1) A patent shall lapse *ipso jure* if the renewal fees referred to in Section 35 have not been paid within a period of six calendar months following the due date referred to in that Section. An entry shall be made of this lapse in the public registers of the Patent Office and shall be notified in the Journal referred to in Section 25.

(2) Section 22D(3) shall apply *mutatis mutandis*.

50. [Repealed]

51.–

(1) A patent shall be annulled insofar as:

(a) it should not have been granted by virtue of the provisions of Section 1A, 2, 2A, 3 or 5 or, where a European patent is concerned, by virtue of the provisions of Articles 52 to 57 of the European Patent Convention;

(b) the patent specification does not contain a description of the invention which is so clear and complete that an expert can work this invention;

(c) the subject matter of the patent is not covered by the content of the filed patent application or by the content of the original patent application if the patent has been granted on a divisional application or on a new European patent application filed pursuant to Article 61 of the European Patent Convention;

(d) after the publication or after the grant of the patent, extension of the scope of the protection has occurred; or

(e) the proprietor of the patent was not entitled to it either by virtue of the provisions of Chapter I of this Act of the Kingdom or, where a European patent is concerned, by virtue of Article 60(1) of the European Patent Convention.

(2) For the purposes of paragraph (1)(a), the state of the art referred to in Article 54(3) of the European Patent Convention shall also comprise the content of patent applications filed under this Act of the Kingdom which were filed on a date prior to the date of filing of the European patent application to which that paragraph applies and which were laid open to public inspection on or after that date pursuant to Section 22C or 25(2).

(3) Annulment proceedings may be instituted under paragraph 1(a) to (d) by any person and under (e) by a person who is entitled to the patent by virtue of the provisions specified there. If the latter person has been granted a patent for the relative invention, the annulment proceedings may also be instituted by licensees and lienors.

(4) The writ shall be entered in the public registers of the Patent Office within eight days from its date of issue. Where the entry is not made in due time, the person who instituted the proceedings is obliged to pay compensation for damages sustained by any persons who acquired, in good faith, after expiry of the time limit and prior to the making of the entry, rights affected by the annulment.

(5) A patent shall be deemed not to have had, as from the outset, all or part of the effects specified in Sections 30, 43A, 43B and 44A to the extent that the patent has been wholly or partially annulled.

(6) The retroactive effect of the annulment shall not affect:

(a) a decision relating to acts in contravention of the sole right of the proprietor of the patent referred to in Section 30 or relating to acts referred to in Sections 43A, 43B and 44A which has acquired the authority of a final decision and has been enforced prior to the annulment;

(b) any contract concluded prior to the annulment insofar as it has been performed prior to the annulment; on grounds of equity repayment may be claimed of sums paid under the contract to the extent justified by the circumstances.

(7) For the purposes of paragraph (6)(b), the conclusion of a contract shall also be deemed to include a license originating in a different manner, as designated in Section 33(2), 34A or 34B.

(8) Where a patent is annulled on the ground of paragraph (1)(e), and the person who is entitled to the patent by virtue of the provisions laid down in that part has obtained a patent for the relative invention himself, licenses acquired in good faith in respect of the annulled patent prior to the date on which the writ was registered shall continue to be valid vis-à-vis the subsisting patent, but the proprietor of the patent shall be entitled, in accordance with the provisions of Section 33(3), to the compensation payable for the licenses. The proprietor of the annulled patent who acted in good faith when filing his application or who obtained the patent in good faith from a previous proprietor prior to the date on which the writ was registered shall continue in that case in respect of the subsisting patent to have the right to work the invention in the manner specified in Section 32.

(9) As soon as a final decision in annulment proceedings has become definitive or the proceedings have lapsed, an entry to this effect shall be made in the public registers of the Patent Office at the request of the most diligent party. A final and definitive annulment shall be notified in the Journal referred to in Section 25.

(1) Where a patent granted under this Act of the Kingdom relates to an invention in respect of which a European patent has been granted to the same inventor or his successor in title, and where the filing dates or, as the case may be, the priority dates of the patent applications concerned are the same, the former patent, insofar as it protects the same invention as the European patent, shall not continue to have the effects specified in Sections 30, 43A, and 44A in the Netherlands as from the date on which:

(a) the time limit prescribed for giving notice of opposition to the European patent has expired without notice of opposition having been given;

(b) the opposition procedure has been concluded, with the result being that the European patent has been maintained; or

(c) the patent has been granted under this Act of the Kingdom, if that date is subsequent to the date referred to under (a) or (b), as the case may be.

(2) Invalidation in any way of the European patent at a later date shall not affect the provisions of the preceding paragraph.

(3) The invalidation proceedings as referred to in paragraph (1) may be instituted by any person.

(4) Section 51(4), (8), first sentence, and (9) shall apply *mutatis mutandis*.

53.–

(1) An action may be instituted claiming the right to a patent in whole, in part or in joint ownership by any person who, under Section 9, 10 or 11 or, where a European patent is concerned, under Article 60(1) of the European Patent Convention, is entitled or jointly entitled to the patent.

(2) The writ with regard thereto shall be entered in the public registers of the Patent Office.

(3) The proprietor of a patent who acted in good faith when filing his application or who obtained the patent in good faith from a previous proprietor, prior to the date on which the writ was registered, shall continue vis-à-vis the new proprietor to have the right to work the invention in the manner specified in Section 32.

(4) Licenses obtained in good faith prior to the registration date shall continue to have effect vis-à-vis the new proprietor of the patent; the latter shall be entitled to compensation payable for licenses pursuant to the provisions of Section 33(3).

(5) The provisions of paragraphs (3) and (4) shall not be applicable if the person who has successfully claimed rights to the patent had previously claimed rights by filing a patent application himself or by giving notice of opposition and the writ serving notice of the claim to the right had been entered in the public registers of the Patent Office within three months from the date on which the patent was granted or, where a European patent is concerned, from the date on which, pursuant to Article 97(4) of the European Patent Convention, the mention of the grant of the European patent was published.

(6) Liens established by a previous proprietor of the patent shall only have effect vis-à-vis the new proprietor of the patent if they have been acquired in good faith and were established before the date on which the writ was registered. They shall have no effect vis-à-vis the new proprietor in the case referred to in the preceding paragraph.

(7) The action referred to in this Section shall be statute-barred at the expiration of a period of five years from the date on which the patent was granted or, where a European patent is concerned, from the date on which, pursuant to Article 97(4) of the European Patent Convention, the mention of the grant of the European patent was published; nevertheless, any person who knew or ought to have known when the patent was obtained that he or the person who assigned the patent to him was not entitled to the patent may not invoke such statute of limitation. Section 2013 of the Netherlands Civil Code shall apply to this limitation.

(8) As soon as a final decision in respect of an action claiming a right has become definitive or the proceedings have lapsed, an entry to this effect shall be made in the public registers of the Patent Office at the request of the most diligent party.

Chapter V

Court Proceedings in Respect of Disputes Relating to Patents

54.–

(1) With regard to all actions for the annulment or invalidation of a patent or in respect of claiming a right to a patent referred to in Sections 51, 52 and 53, respectively, with regard to all actions in respect of claiming European patent applications, as well as with regard to all actions in respect of the awarding of a remuneration as referred to in Section 34(9), 34A(2) or 34B(3), the District Court [*Arrondissementsrechtbank*] of The Hague shall have exclusive jurisdiction in the first instance.

(2) The District Court of The Hague and the President of that Court in summary judgment have exclusive jurisdiction in the first instance in the Netherlands with respect to all actions as referred to in Sections 43, 43A, 43B and 44A as well as with respect to all actions instituted by some person other than the proprietor of the patent in order to obtain a decision that certain acts performed by him are not in contravention of a patent.

(3) With regard to all other matters, the ordinary provisions governing the administration of justice in force in the Netherlands shall apply.

55.–

(1) Any person who has requested the Patent Office to make an entry in a register of a document, provided it is not a patent application, may, if entry in the register is refused, address himself, by filing a request, to the Court referred to in the preceding Section. Any person who feels aggrieved as a result of the making of an entry in a register of a document, provided it is not a patent application, may also so act.

(2) The court may, upon hearing the person who filed the request, the President of the Patent Office or his representative and, where the court deems it necessary, other interested persons, order an entry to be made or, in the latter case, pronounce that the entry shall have no effect in whole or in part, which pronouncement shall be notified in the register.

(3) Subpoenas summoning parties to appear shall be served by registered letter upon the persons designated by the court. The persons so summoned may cause themselves to be represented by a special representative, but the court may direct such persons to appear in person. The opinion of each of the persons who have appeared shall be notified in the records. In the event of the non-appearance of any or even all of the persons summoned, the court may render a judgment without a hearing.

(4) The person who made the request, the President of the Patent Office and the interested persons summoned may lodge an appeal within 14 days from the date on which the judgment was given. The appeal may be lodged immediately.

56.–

(1) All disputes other than those specified in the two preceding Sections shall be brought before the court which has jurisdiction under the general rules governing the administration of justice.

(2) Proceedings instituted under the provisions of Section 10(2) shall be deemed to be proceedings relating to a contract of employment.

(3) Where it appears to the court that a judgment on a contested matter may be affected by proceedings instituted or possibly to be instituted under Section 51, 52 or 53, the court may stay the proceedings relating to the contested matter, with or without prescribing a time limit. The court may also so act where a judgment relating to such proceedings may be affected by proceedings instituted on different grounds.

(4) The court may stay proceedings relating to a dispute in respect of a European patent, with or without prescribing a time limit, where notice has been given to the European Patent Office of opposition to that patent by virtue of Article 99 of the European Patent Convention.

57.–

(1) The Patent Office shall be required to provide the court with all the information and technical advice the court may require to reach a decision in respect of patent proceedings brought before it.

(2) The advice provided by the Patent Office pursuant to the preceding paragraph shall have the same effect as advice given by experts, as referred to in Sections 222 to 236 of the Netherlands Code of Civil Procedure, has in the Netherlands.

57A. A separate copy of all patent law judgments pronounced by a court shall be sent free of charge within one month by the Clerk of the Court which has rendered the judgment to the Patent Office and, where a European patent is concerned, to the European Patent Office referred to in the European Patent Convention.

Chapter VI

Special Provisions for the Netherlands Antilles and Aruba

58. An Industrial Property Bureau may be established in the Netherlands Antilles and in Aruba. These Bureaus shall be institutions of those countries.

59.–

(1) Patent applications may be filed by applicants having their residence in the Netherlands Antilles or Aruba at the Industrial Property Bureau established there.

(2) The date of filing at the Bureau concerned shall be considered to be the date of filing at the Patent Office.

(3) Section 21 shall apply, provided that the fee payable pursuant to that Section shall be paid to the Bureau concerned.

60. The Bureau concerned shall give effect to Section 22, provided that the date of receipt at the said Bureau shall be marked on the application as the date of filing.

61.–

(1) The Bureau concerned shall send the application together with the relevant specification, drawings and models, annexing a copy of the receipt issued therefor, without delay following registration to the Patent Office, unless it appears to the said Bureau that any of the documents does not comply with the formal requirements prescribed by law.

(2) In the latter case the alleged deficiencies in the application shall be notified in writing to the applicant by the Bureau concerned, which shall invite the applicant to remedy the deficiencies or supplement the application within such a period as the said Bureau shall specify. Upon expiration of that period the documents filed by the applicant, together with a copy of the receipt issued to him, shall be forwarded without delay by the Bureau to the Patent Office, irrespective of whether or not the above-mentioned invitation has been complied with.

62. The Patent Office shall upon receipt of the application enter it in a register under a consecutive number.

63.–

(1) Any person having his residence in the Netherlands Antilles or Aruba may file requests, notices of opposition and notices of appeal under this Act of the Kingdom at the Industrial Property Bureau established there.

(2) That Bureau shall, without delay, give telegraphic notice of the filing of a request, notice of opposition or notice of appeal to the Patent Office and shall forward the document that has been filed to the Patent Office.

64. *[Repealed]*

Chapter VII

Provisions in Respect of Entry into Force and Final Provisions

65. *[Repealed]*

66. *[Repealed]*

67. *[Repealed]*

68. *[Repealed]*

69.–

(1) This Act of the Kingdom shall have binding effect for the whole Kingdom.

(2) It shall be cited as the “Patents Act of the Kingdom.”

70. *[Repealed]*

71. The decision to repeal the common regulation provided for by this Act of the Kingdom may be proclaimed in the Netherlands by means of an Act and in the Netherlands Antilles and Aruba by means of a national enactment. As from the third calendar year following the year in which such an Act or enactment is promulgated, this Act of the Kingdom shall acquire the status of a statutory instrument in the Netherlands and as a national enactment in the Netherlands Antilles and Aruba.