

## Patents Act

(Act No 9 of December 15, 1967, as amended by Acts No 35 of June 8, 1979,  
No 2 of February 8, 1980, No 30 of May 24, 1985, No 29 of June 14, 1991,  
No 86 of June 26, 1992, No 113 of November 27, 1992,  
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## Chapter 1 General Provisions

**Section 1.** Any person who has made an invention which is susceptible of industrial application, or his successor in title, shall, in accordance with this Act, have the right on application to be granted a patent for the invention and thereby obtain the exclusive right to exploit the invention commercially.

The following subject matter or activities as such shall not be considered as inventions:

- (1) discoveries, scientific theories and mathematical methods;
- (2) aesthetic creations;
- (3) schemes, rules or methods for performing mental acts, playing games or doing business, or programs for computers;
- (4) presentation of information.

Nor shall methods for surgical or therapeutic treatment or diagnostic methods, practised on humans or animals, be considered as inventions. This provision shall not prevent the grant of patents for products, including, substances and compositions of substances, for use in such methods.

Patents shall not be granted for:

- (1) inventions the exploitation of which would be contrary to morality or public order;
- (2) plant varieties or animal races or essentially biological processes for the production of plants or animals. Patents may, however, be granted for microbiological processes and the products thereof.

**Section 2.** Patents shall be granted only for inventions which are new in relation to what was known before the filing date of the patent application, and which also differ essentially therefrom.

Everything made available to the public, either in writing, orally, by exploitation or otherwise, shall be considered as known. The contents of a patent application filed in this country before the said date shall also be considered as known if the application is made available to the public in accordance with the

provisions of Section 22. The requirement in the first paragraph that the invention shall differ essentially from what was known shall not apply in relation to the contents of such an application.

Applications referred to in Chapter 3 shall have the same effect as applications filed in this country in the cases indicated in Sections 29 and 38.

The requirement in the first paragraph that the invention must be new shall not prevent the grant of a patent for known substances or known compositions for use in the methods referred to in Section 1, third paragraph, provided that the use of the substance or the composition is not known in relation to any of those methods.

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

- (1) through evident abuse in relation to the applicant or his predecessor in title; or
- (2) through display of the invention by the applicant or his predecessor in title at an official or officially recognized international exhibition falling within the terms of the Convention on International Exhibitions, done at Paris on November 22, 1928.

**Section 3.** The exclusive right conferred by a patent shall, with the exceptions referred to in the third paragraph, imply that no one but the patentee may, without his consent, exploit the invention by:

- (1) producing, offering, putting on the market or using a product protected by the patent, or by importing or possessing the product for such purposes;
- (2) using or offering to use a process protected by the patent or, while knowing, or if it is obvious under the circumstances, that the use of the process is prohibited without the consent of the patentee, offering the process for use in this country;
- (3) offering, putting on the market or using a product made by a process protected by the patent, or importing or possessing the product for such purposes;

The exclusive right shall also imply that no one but the patentee may, without his consent, exploit the invention by offering or supplying any person who is not entitled to exploit the invention in this country with the means for carrying out the invention, provided that the means relate to an essential element of the invention and the person supplying or offering the means knows, or it is obvious under the circumstances, that the means are suitable and intended for such exploitation. If the means are staple commercial products, this provision shall only apply where the person offering or supplying the means attempts to induce the recipient to commit acts infringing the exclusive right provided for in the first paragraph. In relation to the provisions of this paragraph, persons exploiting the invention as referred to in the third paragraph, items 1, 3 or 4, shall not be considered entitled to exploit the invention.

The exclusive right shall not include:

- (1) exploitation for non-commercial purposes;
- (2) exploitation of products protected by the patent which have been put on the market in The European Economic Area by the patentee or with his consent;
- (3) exploitation by experiment relating to the subject matter of the invention
- (4) preparation in a pharmacy in individual cases of a medicine in accordance with a prescription, or acts carried out with a medicine so prepared.

**Section 4.** Anyone who, at the time when the patent application was filed, was exploiting the invention commercially in this country, may, notwithstanding the patent, continue the exploitation, retaining its general character, provided that the exploitation does not constitute an evident abuse in relation to the applicant or his predecessor in title. Such right of exploitation shall also, on similar conditions, be enjoyed by anyone who had made substantial preparations for commercial exploitation of the invention in this country.

The right provided for in the first paragraph may only be transferred to others together with the business from which it originated or in which the exploitation was intended.

**Section 5.** An invention may, notwithstanding a patent, be exploited on a foreign vehicle, vessel or aircraft in connection with the use of such means of transportation during their temporary or accidental stay in this country.

Where a foreign country grants similar rights in respect of Norwegian aircraft, the King may provide, notwithstanding a patent, that spare parts and accessories for aircraft be imported into and used in this country for the repair of aircraft belonging to that country.

**Section 6.** A patent application for an invention which has been disclosed not earlier than 12 months before the date of filing in an application for a patent in this country or for a patent, an inventor's certificate or utility model protection in a foreign country party to the Paris Convention for the Protection of Industrial Property of March 20, 1883, shall, for the purposes of Section 2, first, second and fourth paragraphs, and Section 4, be considered as filed at the same time as the previous application, if the applicant so claims. Such priority may also be enjoyed of a patent application which does not relate to a country party to the Paris Convention, provided that an equivalent right of priority is granted on the basis of Norwegian patent applications in the country where the previous application was filed, and the legislation of that country, in essence, is in conformity with the Convention.

The King shall prescribe the particulars concerning the right to claim priority, as referred to above.

## Chapter 2

### The Patent Application and Its Processing, Etc.

**Section 7.** The patent authority of this country shall be the Patent Office (Patentstyret).

**Section 8.** An application for a patent shall be filed in writing with the Patent Office or, in the cases referred to in Chapter 3 of this Act, with the patent authority or international organization referred to in Section 28.

The application shall contain a description of the invention, including drawings where such are necessary, and a precise statement of the subject matter for which protection by the patent is sought (patent claims). The fact that the invention relates to a chemical compound shall not imply that a specific use must be indicated in the claim. The description shall be sufficiently clear to enable a person skilled in the art to carry out the invention on the basis thereof. An invention which relates to a microbiological process or to a product obtained by such a process, shall in the cases referred to in Section 8a, only be considered disclosed in a sufficiently clear manner if the requirements of Section 8a are also complied with.

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

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

The applicant shall pay the prescribed application fee. A prescribed annual fee shall also be paid for every fee year beginning before the application is finally decided on.

A fee year in accordance with this Act comprises one year and shall be counted the first time from the day on which the application was filed and thereafter from the corresponding day of the calendar year.

**Section 8a.** Where the carrying out of an invention involves the use of a microorganism which neither is available to the public nor can be described in the application documents in such a manner that a person skilled in the art can carry out the invention on the basis thereof, a culture of the microorganism shall be deposited not later than the day on which the application is filed. The culture shall then be on storage consecutively so that anyone who under this Act has the right to be furnished with a sample of the culture, may be furnished with a sample in Norway. The King decides where deposits may be made.

If a deposited culture of a microorganism is no longer viable or a sample of the culture cannot be furnished for other reasons, it may be replaced by a new deposit of a culture of the same microorganism within the prescribed time limit and on the other conditions laid down by the King. In that case the new deposit shall be considered made on the day that the previous deposit was made.

**Section 9.** If the applicant so requests and pays the prescribed fee, the Patent Office shall, on conditions laid down by the King, allow the application to be subjected to a novelty search by an International Searching Authority as referred to in Article 15(5) of the Patent Cooperation Treaty, done at Washington on June 19, 1970.

**Section 10.** A. patent for two or more mutually independent inventions may not be applied for in the same application.

**Section 11.** If a patent for an invention is applied for and the invention is disclosed in a patent application previously filed by the applicant, but not yet decided upon, the subsequent application shall, at the request of the applicant and on conditions laid down by the King, be considered as filed on the date on which the documents disclosing the invention were received by the Patent Office.

**Section 12.** An applicant who is not a resident of this country shall have an agent residing in this country who can represent him in all matters concerning the application.

**Section 13.** An application for a patent must not be amended in such a way that protection is claimed for subject matter which was not disclosed in the application at the time of filing or at the time when it is considered to have been filed under Section 14.

**Section 14.** If the applicant amends the application within six months from the date of filing, the application shall, if the applicant so requests, be considered filed at the time when the amendment was received by the Patent Office.

A request under the first paragraph must be made within two years from the date on which the application was filed. Such request may only be submitted once and may not be withdrawn.

**Section 15.** If the applicant has not complied with the prescribed requirement as to the application, or if the Patent Office finds that there are other grounds for non-acceptance of the application, the applicant shall be notified to that effect and be invited to submit observations or to correct the application within a specified time limit. However, the Patent Office may make such amendments in the abstract as is found necessary without consulting the applicant.

If the applicant fails, within the time limit, to submit observations or to take the initiative to correct a defect which has been notified, the application shall be shelved. Information to that effect shall be given in the notification from the Patent Office referred to in the first paragraph.

However, the processing of the application shall be resumed if the applicant submits observations or takes the initiative to make corrections and pays the prescribed fee for resumption of the processing within four months from the expiration of the said time limit.

If the annual fee referred to in Sections 8, 41 and 42 is not paid, the application shall be shelved without prior notification. The processing of an application which has been shelved for this reason cannot be resumed.

**Section 16.** If the Patent Office, subsequent to the receipt of the applicant's reply, finds any obstacle to the acceptance of the application and the applicant has been given an opportunity to comment on the obstacle, the application shall be refused, unless the Patent Office finds that further correspondence is required.

**Section 17.** If anyone claims before the Patent Office that he, and not the applicant, is entitled to the invention, the Patent Office may, if the question is found doubtful, require that the question be brought before the courts of law within a specified time limit, the claimant being notified that if he does not comply with this requirement, his claim may be disregarded in the further processing of the case.

If action has been brought with respect to the question of the right to the invention, the processing of the patent application may be suspended until the courts have reached a final decision on the question.

**Section 18.** If anyone adduces evidence before the Patent Office that he, and not the applicant, is entitled to the invention, the Patent Office shall, instead of refusing the application for that reason, transfer it to him if he so requests. The transferee shall pay a new application fee.

If a request has been made for transfer of a patent application, the application shall not be shelved, refused or accepted until the request has been finally decided upon.

**Section 19.** If the application complies with the prescribed requirements and there are no obstacles to the grant of a patent, the laying open of the application to public inspection under Section 21 shall be approved.

Subsequent to the decision to approve the laying open of the application to public inspection, no request may be submitted under Section 14 and the patent claims may not be amended so as to extend the scope of the patent protection.

**Section 20.** The applicant must pay the prescribed fee for the laying open of the application to public inspection within two months from the notification by the Patent Office to the applicant to the effect that the laying open of the application to public inspection has been approved. If this is not done, the application shall be shelved. However, the processing of the application shall be resumed if the applicant pays the said fee as well as the prescribed fee for resumption of the processing within four months from the expiration of the time limit.

If the applicant is the inventor and if, within two months from the mailing of the decision to approve the laying open of the application to public inspection, he requests exemption from payment of the fee for the laying open of the application to public inspection, the Patent Office may admit such exemption if the payment of the fee is found to cause considerable difficulties for the applicant. If the request for exemption is refused, payment of the fee within two months from the refusal shall be considered as payment in due time.

**Section 21.** When the fee for the laying open of the application to public inspection under Section 20 has been paid or exemption from payment of I such fee has been admitted, the Patent Office shall lay the application open to public inspection in order to give the public an opportunity to file an opposition against it. The laying open to public inspection shall be published.

An opposition must be presented in writing and must be submitted to the Patent Office within three months from the date of publication.

At the same time as the application is laid open to public inspection, the Patent Office shall issue printed copies of the description and the patent claims. The name of the applicant and the inventor shall be indicated in the publication.

**Section 22.** All documents of the application shall be made available to the public on and after the day on which the application was laid open to public inspection.

When 18 months from the filing date of the application or, if priority under Section 6 has been claimed, from the date of priority, have expired, the documents shall be made available to the public even if the application has not been laid open to public inspection. However, if the application has been shelved or refused, the documents shall not be made available to the public unless the applicant requests resumption of the processing of the application, appeals against the refusal or requests re-establishment of rights under Sections 72 or 73.

At the applicant's request, the application documents shall be made available to the public earlier than prescribed above.

A notice concerning the making available to the public of documents under the second or third paragraph shall be published by the Patent Office.

If a document contains commercial secrets which do not relate to an invention which is the subject of the actual patent application, the Patent Office may, upon request and where there are special reasons to do so, decide that the document shall not be made available to the public. If such a request has been submitted, the document shall not be made available to the public until the request has been refused by a final decision, in accordance with Section 24, third paragraph.

Proposals, drafts, memoranda and other similar working documents prepared by the Patent Office for the purpose of the processing of an application shall not be available to the public, unless the Patent Office so decides.

If a culture of a microorganism has been deposited according to Section 8a, anyone has a right to be furnished with a sample of the culture when the documents of the application have been made available in accordance with the first, second or third paragraph. However, this does not entail that a sample shall be furnished to anyone who is not entitled by law or regulations to be concerned with the microorganism deposited. Moreover, the provision of the first sentence does not entail that a sample shall be furnished to anyone whose connection with it must be assumed to be involved with considerable risk due to the damaging properties of the organism.

Until the application has been laid open to public inspection or has been finally decided on without having been laid open to public inspection, notwithstanding the provisions of the seventh paragraph, if the applicant so requests, a sample may only be furnished to a specially appointed expert. The King shall prescribe a time limit for putting forward the request and decide who may be appointed an expert.

A request to have a sample furnished must be made in writing to the Patent Office and must contain a declaration to the effect that the limitations laid down by the King concerning the use of the sample will be observed. If the sample may only be furnished to a specially appointed expert, the declaration shall be made by the expert instead.

**Section 23.** After the expiration of the time limit referred to in Section 21, second paragraph, the processing of an application shall be continued in order to decide whether the application shall be accepted. For the said processing Sections 15 to 18 shall apply.

If an opposition has been submitted, it shall be notified to the applicant, and he shall be given an opportunity to submit his observations thereon.

**Section 24.** If the final decision on an application goes against the applicant, he may make the decision the subject of an appeal to the Board of Appeals of the Patent Office. If an application has been accepted despite a properly submitted opposition, the decision may be the subject of an appeal by the opponent. If the opponent withdraws his appeal, it may nevertheless be decided upon in cases where there are special reasons for doing so.

A decision refusing a request for resumption under Section 15, third paragraph, or Section 20, first paragraph, or accepting a request for transfer under Section 18 may be appealed to the Board of Appeals by the applicant. A decision refusing a request for transfer under Section 18 may be appealed by the party who made the request.

A decision refusing a request under Section 22, fifth paragraph, or a request for a sample under Section 22, ninth paragraph, may be appealed to the Board of Appeals by the party who made the request.

**Section 25.** An appeal must be received by the Patent Office within two months from the date on which notification of the decision was sent to the party concerned. The prescribed appeal fee must be paid within the same time limit. If these provisions are not complied with, the appeal shall not be submitted for consideration.

A decision by the Board of Appeals refusing an application for a patent may not be brought before the courts of law later than two months from the date on which the applicant was notified of the refusal. Information of the appeal period shall be given in the notification.

The provisions of Section 22, fifth and sixth paragraphs, shall apply correspondingly to documents submitted to the Board of Appeals.

**Section 26.** A patent shall be considered to have been granted when the decision to accept the application is final. The grant of a patent shall be published and the letters patent shall be issued. If the description has, or the patent claims have, been amended after being printed according to Section 21, third paragraph, printed copies thereof shall be issued in their final form. The name of the applicant and the inventor shall be indicated in those copies.

If an application which has been made available to the public is shelved or refused, that decision shall be published when it has become final.

**Section 27.** Patents granted shall be entered in the Patent Register, which is kept by the Patent Office. Anyone shall be entitled to examine the Patent Register, to obtain certified extracts therefrom and to obtain copies of patent applications which have been made available to the public according to Section 22, with enclosures.

## Chapter 3

### International Patent Applications

**Section 28.** An international patent application means an application filed in accordance with the Patent Cooperation Treaty, done at Washington on June 19, 1970 (hereinafter called “the PCT”).

International patent applications shall be filed with the national patent authorities or international organizations which, according to the PCT, are entitled to receive such applications (Receiving Offices). The Patent Office is a Receiving Office according to provisions laid down by the King. The applicant must pay the prescribed fee for an international application which is filed with the Patent Office.

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

**Section 29.** An international patent application for which the Receiving Office has accorded an international filing date shall have the same effect as a patent application filed in this country on the same date. However, the provision of Section 2, second paragraph, second sentence, shall only apply if the application is proceeded with in accordance with Section 31.

**Section 30.** An international patent application shall be considered withdrawn as far as Norway is concerned in the cases referred to in Article 24(1) (i) and (ii) of the PCT.

**Section 31.** If the applicant wishes to proceed with an international patent application designating Norway, he must, within 20 months from the international filing date or, if priority is claimed, from the date from which priority is claimed, file a translation of the international application with the Patent Office to the extent provided for by the King, or if the application is in Norwegian, a copy thereof. The applicant must, within the same time limit, pay the prescribed fee to the Patent Office.

If the applicant has requested that the international application be subjected to an international preliminary examination and if, within 19 months from the date indicated in the first paragraph, he has declared in accordance with the PCT that he intends to use the results of that examination in connection with an application for a patent in Norway, he must comply with the provisions of the first paragraph within 30 months from the said date.

If the applicant has paid the prescribed fee within the time limit indicated in the first or second paragraph, the translation or copy may be filed within an extended time limit of two months provided he pays a prescribed additional fee within the expiration of the extended time limit.

If the applicant fails to comply with the provisions of this Section, the application shall be considered withdrawn as far as Norway is concerned.

**Section 32.** If the applicant withdraws his request for international preliminary examination or his declaration that he intends to use the results of such examination in an application for a patent in Norway, the international patent application shall be considered withdrawn as far as Norway is concerned, unless the withdrawal takes place before the expiration of the time limit indicated in Section 31, first paragraph, and provided the applicant proceeds with the application within the time limit indicated in Section 31, first paragraph, cf. the third paragraph.

**Section 33.** If an international patent application has been proceeded with in accordance with Section 31, the provisions of Chapter 2 shall, subject to the provisions of this Section and Sections 34 to 37, apply to the application and its processing. However, the processing of the application shall not, without the approval of the applicant, be started until the expiration of the time limit indicated in Section 31, first or second paragraph.

The provisions of Section 12 shall only apply from the time when the Patent Office is allowed to start the processing of the application.

The provisions of Section 22 shall also apply prior to the proceeding of the application, provided the applicant has complied with the obligation under Section 31 to file a translation of the application, or, if the application is in Norwegian, has filed a copy with the Patent Office.

For the purposes of Sections 48, 56 and 60, an international patent application shall be considered to have been made available to the public when it has been made available under the third paragraph.

If the application complies with the requirements of the PCT as regard form and contents, it shall be accepted in those respects.

**Section 34.** The laying open of an international patent application to public inspection shall not be approved, nor shall the application be refused, until the expiration of the time limit prescribed by the King, unless the applicant consents to the application being decided upon before the expiration of the said time limit.

**Section 35.** An international patent application shall not, without the consent of the applicant, be laid open to public inspection or be published in printing or in any similar manner until it has been published by the International Bureau of the World Intellectual Property Organization or until 20 months have elapsed from the international filing date or, if priority is claimed according to Section 6, from the date from which priority is claimed.

**Section 36.** If a part of an international patent application has not been subjected to an international search or an international preliminary examination on the ground that the application has been considered to relate to inventions which are mutually independent and the applicant has not paid the additional fee as prescribed by the PCT within the prescribed time limit, the Patent Office shall review whether that consideration was justified. If this is found to be the case, the part of the application which has not been searched or examined shall be considered withdrawn, unless the applicant pays the prescribed fee within two months from the date on which the Patent Office sent him notification of its decision. If the Patent Office considers that the finding was not justified, it shall continue the processing of the application in its entirety.

The applicant may appeal against a decision according to the first paragraph in cases where the Patent Office has found that the patent application relates to independent inventions. The provisions of Section 25, first and second paragraphs, shall apply correspondingly.

If the Board of Appeals of the Patent Office maintains the decision of the Examining Department, the time limit for payment of such fee as referred to in the first paragraph, second sentence, shall be calculated from the date on which the Patent Office sent a notification to the applicant of the decision of the Board of Appeals.

**Section 37.** If a part of an international patent application has not been subjected to an international preliminary examination on the ground that the applicant has restricted the patent claims on the invitation of the authority concerned, the part of the application which has not been examined shall be considered withdrawn unless the applicant pays the prescribed fee to the Patent Office within two months from the invitation by the Patent Office to pay with reference to the restriction of the examination which has been carried out.

**Section 38.** If the Receiving Office has refused to accord an international filing date to an international patent application or if it has declared that the application shall be considered withdrawn or that the designation of Norway shall be considered withdrawn, the Patent Office shall, at the request of the applicant, review the decision for the purpose of determining whether it was justified. The same shall apply in cases where the International Bureau has declared that the application shall be considered withdrawn.

A request for review under the first paragraph shall be submitted to the International Bureau within the time limit prescribed by the King. The applicant must, within the same time limit, submit to the Patent Office a translation of the application to the extent provided by the King, and pay the prescribed application fee.

If the Patent Office finds that the decision of the Receiving Office or of the International Bureau was not justified, the Patent Office shall continue the processing of the application according to Chapter 2. If the Receiving Office has not accorded an international filing date, the application shall be deemed to have been filed on the date which the Patent Office finds should have been accorded as the international filing date. If the application satisfies the requirements of the PCT as to form and contents, it shall be accepted in those respects.



The provisions of Section 2, second paragraph, second sentence, shall apply to an application which is processed according to the third paragraph, provided that the application is made available to the public according to Section 22.

## Chapter 4 The Extent and Duration of the Patent

**Section 39.** The extent of the patent protection shall be determined by the patent claims. The description may be used as a guide to the understanding of the patent claims.

**Section 40.** A patent granted may be maintained for up to 20 years from the date of filing of the patent application.

In order to maintain a patent, an annual fee must be paid for every fee year beginning after the grant of the patent. If the patent has been granted before the annual fee has started to fall due under Section 41, the patentee, when the annual fee falls due for the first time, shall pay annual fees also for fee years beginning before the grant of the patent.

## Chapter 5 Annual Fees

**Section 41.** The annual fee falls due on the last day of the calendar month in which the fee year starts. However, the annual fees for the first two fee years shall not fall due until the annual fee for the third fee year falls due. The annual fee may not be paid prior to a period of six months before it falls due. If the courts of law set aside a decision by the Board of Appeals to refuse a patent application, annual fees for fee years beginning after the decision by the Board of Appeals and up to the date on which the decision of the court became legally binding, shall nevertheless not fall due prior to the elapse of two months from the last mentioned date.

For a subsequent application as referred to in Section 11, the annual fees for fee years beginning before the date on which the subsequent application was filed or beginning within a period of two months from that date, shall in no case fall due prior to the elapse of two months from that date. For an international patent application, annual fees for fee years beginning before the date on which the application was proceeded with in accordance with Section 31 or processed in accordance with Section 38 or beginning within two months from that date, shall in no case fall due prior to the elapse of two months from that date.

Upon payment of an additional fee, the annual fee may be paid within six months after the due date.

**Section 42.** If the inventor is the applicant or the patentee and the Patent Office finds that the payment of the annual fee involves considerable difficulties for him, the Patent Office may grant him an extension of the time limit, provided he requests this not later than on the date on which the annual fee falls due for the first time. An extension may be granted for up to three years at the time, but shall not exceed three years from the grant of the patent. A request for a prolonged extension must be made prior to the expiration of the extension period granted.

If the request for extension or prolonged extension is refused, payment of the fee within two months from the date on which notification of the refusal was sent to the applicant or the patentee shall be considered as payment in due time.

Annual fees for which an extension of the time limit for payment has been granted, may upon payment of the additional fee referred to in Section 41, third paragraph, be paid within six months after the expiration of the extension period.

## Chapter 6 License, Transfer, Etc.

**Section 43.** If the patentee has granted someone else the right to exploit the invention commercially (license), the licensee may not transfer his right to others, unless the contrary has been agreed upon or shall be considered to have been agreed upon.

**Section 44.** A transfer of a patent to someone else or the grant of a license shall be recorded in the Patent Register at the request of one of the parties.

Where a license which has been recorded in the Register has terminated, this fact shall be recorded at the request of one of the parties.

The provisions of the first and second paragraphs shall apply correspondingly to a transfer and a termination of a compulsory license, as well as to a right under Section 53, third paragraph. Registration of distraints is regulated by the Claims Enforcement Act Section 7–20 eighth paragraph.

Legal proceedings concerning a patent may always be brought against the party who has been recorded in the Register as the owner, and notifications from the Patent Office may be sent to him.

In the case of a conflict between a voluntary transfer of a patent or a grant of a license, the recording of which has been requested, and a transfer or grant of a license, the recording of which has not been requested or has been requested subsequently, the former shall prevail. provided that the holder of the title was in good faith at the time of the submission of the request.

**Section 45.** Where three years have elapsed from the grant of the patent and four years from the filing of the patent application without the invention being worked to a reasonable extent in this country, anyone who wishes to work the invention in this country may obtain a compulsory license for that purpose, provided there is no legitimate reason for the failure to work the invention.

The King may, on condition of reciprocity, provide that, for the purpose of applying the first paragraph, working in a foreign country be considered equivalent to working in this country.

**Section 46.** The owner of a patent for an invention, the exploitation of which is dependent on a patent owned by someone else, may obtain a compulsory license to exploit the invention protected by the latter patent if this is found to be justified in view of the importance of the former invention or for other special reasons.

The owner of the patent for the invention to which the compulsory license applies may obtain a compulsory license to exploit the other invention, unless special reasons make it undesirable.

**Section 47.** Whenever required by important public interests, anyone who wishes to exploit an invention commercially for which someone else holds a patent may obtain a compulsory license to do so.

**Section 48.** Anyone who, at the time when a patent application was made available to the public, was commercially exploiting the invention for which a patent is applied for in this country, may, if the application results in a patent, obtain a compulsory license for the exploitation of the invention, provided that special reasons make it desirable, and that he had no knowledge of the application and could not reasonably have obtained such knowledge. Such right shall also, on similar conditions, be enjoyed by anyone who has made substantial preparations for commercial exploitation of the invention in this country. The compulsory license may also comprise the time preceding the grant of the patent.

**Section 49.** A compulsory license may only be granted to someone who may be presumed able to exploit the invention in an acceptable way which is in accordance with the terms of the license.

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

**Section 50.** A compulsory license shall be granted by the court, which shall also determine to what extent the invention may be exploited and stipulate the compensation and the other terms of the license.

If circumstances should change considerably, the court may, at the request of either party, cancel the license or stipulate new terms.

In a decision granting or extending a compulsory license, the court may find that the owner of the compulsory license shall have the right to exploit the invention in accordance with the decision during the period prior to the decision becoming legally binding. The Settlement of Disputes Act, Section 148, second paragraph, shall apply correspondingly. If the compulsory license is cancelled because the decision is opposed before becoming legally binding, the owner of the compulsory license is obliged to pay compensation to an extent considered reasonable for the loss caused by the exploitation. The third sentence shall apply correspondingly if restrictions are imposed on the compulsory license. In a decision made under the first sentence, the court may instruct the licensee to furnish security for liability under the third and fourth sentences. If a decision granting or extending a compulsory license is opposed before becoming legally binding, the court to which the decision is brought, may make or reverse a decision under the first and fifth sentences. The decision is made by a ruling or by the final decision in the matter, CF the second sentence. A ruling under the seventh sentence may only be opposed in connection with an appeal of the final decision in the matter.

## Chapter 7

### Termination of the Patent, Etc.

**Section 51.** If an annual fee has not been paid in accordance with Sections 40, 41 and 42, the patent shall lapse as from the start of the fee year in respect of which the fee has not been paid.

**Section 52.** A patent may be invalidated by a court decision if it:

- (1) has been granted notwithstanding that the requirements under Sections 1 and 2 are not complied with
- (2) relates to an invention the description of which is not sufficiently clear to enable a person skilled in the art to carry out the invention on the basis thereof;
- (3) contains subject matter which was not disclosed in the application when it was filed; or
- (4) has been granted notwithstanding that the protection conferred by the patent has been extended after the approval of the laying open of the application for public inspection.

A patent shall not be invalidated in its entirety on the ground that the patentee is only partially entitled to the patent.

Legal proceedings according to this provision may be brought by anyone, subject to the provisions of the fourth paragraph.

Legal proceedings on the ground that the patent has been granted to someone other than the party entitled under Section 1 may only be brought by the party claiming to be entitled to the patent. Such proceedings must be brought within one year from the point of time when the entitled party obtained knowledge of the grant of the patent and of the other facts on which the proceedings are based. If the patentee was in good faith when the patent was granted or when he acquired the patent, the proceedings must under no circumstances be brought later than three years from the grant of the patent.

No re-establishment of rights shall be granted for the failure to meet the time limits prescribed in the fourth paragraph.

**Section 53.** If a patent has been granted to someone other than the party entitled under Section 1, the court shall, if the party entitled so claims, transfer the patent to him.

The time limits under Section 52, third and fourth paragraphs, for bringing proceedings before the court shall apply correspondingly to a proceeding under this provision.

The party who is deprived of the patent shall, if he has started to exploit the invention commercially in this country in good faith or if he has made substantial preparations for such exploitation, be entitled, against reasonable compensation and on reasonable conditions in other respects, to continue the exploitation or to start the prepared exploitation retaining its general character. Such right shall also, on the same conditions, be enjoyed by holders of recorded licenses. The right may only be transferred to others in connection with the business in which the exploitation takes place or was intended to take place.

**Section 54.** If the patentee renounces the patent in a written notice to the Patent Office, the Patent Office shall declare the patent revoked.

If proceedings for the transfer of a patent have been brought or if the patent has been distrained, the patent shall not be declared revoked until the proceedings have been finally decided upon or the distraint has been revoked.

**Section 55.** When a patent has lapsed or has been invalidated, transferred or declared revoked, the Patent Office shall publish a notice to that effect.

## Chapter 8 Obligation to Give Information About Patents

**Section 56.** An applicant for a patent who invokes his application against another party before it has been made available to the public shall, upon request, be under an obligation to give that party access to the documents of the application. If the application involves the deposit of a culture of the microorganism as referred to in Section 8a, the other party shall have the right to be furnished with a sample of the culture. The provisions of Section 22, seventh paragraph second and third sentences, and the eighth and ninth paragraphs shall apply correspondingly.

Anyone who, either by direct communication to someone else or by advertisement or by marking of goods or their packagings or in any other manner indicates that a patent has been applied for or is granted, without giving, at the same time, information concerning the number of the application or of the patent, shall be under an obligation to give such information without undue delay to anyone so requesting. If it is not explicitly indicated that a patent has been applied for or granted, but where the indication is liable to create the impression that such is the case, information shall be given, upon request and without undue delay, whether a patent has been applied for or granted.

## Chapter 9 Provisions Concerning Legal Protection, Etc.

**Section 57.** Anyone who intentionally infringes the exclusive right conferred by a patent (patent infringement), or who is an accessory thereto, shall be punished by fine or imprisonment for a term not exceeding three months.

Public prosecution shall only take place at the request of the plaintiff.

**Section 58.** Anyone who intentionally or by negligence has committed a patent infringement shall be liable to pay compensation for the exploitation of the invention, as well as compensation for the further damage caused by the infringement. The compensation may be reduced where the infringer is guilty only of diminished blame.

If the infringer has acted with care and in good faith, the court may, to the extent found reasonable, sentence the infringer to make compensation for the damage caused by the exploitation.

**Section 59.** In the event of patent infringement, the court may, in order to prevent further infringement, when so claimed and to the extent found reasonable, decide that a product protected by a patent which has been produced without the consent of the patentee, or an object the use of which would involve a patent infringement, be altered in a specified manner, destroyed, confiscated or, where the case relates to an object protected by a patent, be handed over to the plaintiff against compensation.

The provisions of the first paragraph shall not be applied to a party who has acquired the product in good faith and who has not committed patent infringement himself.

Notwithstanding the provisions of the first paragraph, the court may, upon request and under special circumstances, permit, against compensation and on appropriate conditions in other respects, disposal of the objects protected by the patent for the rest of the term of the patent or during a part of that period.

**Section 60.** Where anyone without permission exploits an invention commercially for which a patent has been applied for after the date on which the application documents have been made available to the public according to Section 22, the provisions concerning patent infringement shall apply correspondingly to the extent that the application results in a patent for the invention. However, in the period prior to the publication of the notice of laying open of the application to public inspection according to Section 21, the patent protection shall be limited to what appears both from the patent claims as worded when the application was made available to the public and from the patent claims of the granted patent. Punishment shall not be imposed, and compensation for damages resulting from exploitation prior to the publication of the laying open of the application to public inspection shall only be imposed in accordance with Section 58, second paragraph.

The statutory limit for claims according to this provision shall not start to run until the patent has been granted.

**Section 61.** In civil actions concerning patent infringements, an acquittal shall not be based on the patent being invalid or the conditions for transfer being fulfilled (cf. Sections 52 and 53) without a judgment stating the invalidity or the transfer of the patent.

**Section 62.** Anyone who intentionally or by negligence fails to give information or to give others access to the documents as provided for in Section 56 or, in the cases referred to in Section 56, gives incorrect information shall be punished by a fine and shall be obliged to compensate the damage caused to the extent found reasonable.

Public prosecution shall only take place at the request of the plaintiff.

## Chapter 9a Prolonged Term of Protection for Medicinal Products

**Section 62a.** Annex XVII, item 6, to the Agreement establishing the European Economic Area [Council Regulation (EEC) No 1768/92 concerning the creation of a supplementary protection certificate for medicinal products with adaptations to the EEA Agreement] including the amendments and additions provided in Protocol 1 of the Agreement and elsewhere in the Agreement shall apply as statutory provisions.

Applications for a supplementary protection certificate shall be filed with the Patent Office. The applicant shall pay the prescribed fee.

For protection certificates the prescribed fees shall be paid for every fee year starting after the end of the patent term. In other respects the rules for annual patent fees shall apply to the annual fees.

Further provisions concerning applications for protection certificates and the processing and examination thereof, concerning the registration of protection certificates, concerning appeals against decisions and concerning the obligation of the applicant or the holder to have an agent in this country, etc. shall be laid down by the King.

The penal provisions of Sections 57 and 62 shall apply correspondingly to protection certificates.

## Chapter 10 Provisions on Legal Procedure

**Section 63.** The following actions shall be brought before the City Court of Oslo:

- (1) actions concerning the right to an invention for which a patent has been applied for;

(2) actions concerning a decision in which the Board of Appeals of the Patent Office has refused an application for a patent in accordance with Section 25, second paragraph;

(3) actions concerning the validity or the transfer of a patent in accordance with Sections 52 and 53.

The City Court of Oslo shall be competent to hear actions by patent applicants and patentees who are not residents of this country.

**Section 64.** Anyone who brings an action concerning the validity of a patent, concerning the transfer of a patent to himself or concerning a compulsory license shall, at the same time, notify the Patent Office and, by registered letter, any licensee recorded in the Patent Register whose address has been indicated in the Register to that effect. A licensee who wishes to bring an action concerning infringement of the patent shall notify the patentee correspondingly if his address has been indicated in the Register.

If the plaintiff cannot prove that he has given such notifications as referred to in the first paragraph, the court may give him a time limit to send the notifications. If the stipulated time limit has not been complied with, the case shall be dismissed.

**Section 65.** In cases concerning patent rights, the court may decide that the public, for the sake of commercial or business secrets of a party or a witness, shall be excluded from the proceedings or a part thereof.

**Section 66.** The court shall send copies of the judgements to the Patent Office in the cases stated in Section 63.

## Chapter 11 Miscellaneous Provisions.

**Section 67.** A patentee who has no residence in this country shall have an agent residing in this country who is recorded in the Patent Register to receive service of process and other procedural notifications concerning the patent on behalf of him.

If the patentee has no such agent, service may be effected by sending him the document, which shall be served by registered letter to the address which is indicated in the Patent Register. Section 178 of the Courts of Justice Act shall apply in such case. If a complete address is not indicated in the Register, service of process, and in other cases where the court finds it necessary, may be made by publishing the document concerned or an extract thereof in *Norsk Lysingsblad* and in the publication issued by the Patent Office with an indication that the document may be obtained at the court office. Section 181, fourth paragraph, of the Courts of Justice Act shall apply in such case and the date of issue of the publication of the Patent Office shall replace the date of notice at the location of the court.

The King may, on condition of reciprocity, provide that the provisions of the first and second paragraphs shall not apply to patentees who are residents of the foreign country concerned or who have an agent residing in that country who are recorded in the Patent Register with the powers referred to in the first paragraph. The service of the notification shall in that case be effected according to the general provisions of Chapter 9 of the Courts of Justice Act.

**Section 68.** The King shall stipulate the amount of the fees provided for in this Act and the further conditions for payment of the fees. He may provide that one or more of the earlier fee years shall be exempted from fee. On amendment of the amounts of the annual fee, he may, within the limitations referred to in Section 76, item 8, provide that the new amounts of the fees shall also apply to patents previously granted.

The King shall also stipulate the amount of the fees for recordings in the Patent Register and for copies and certificates issued by the Patent Office.

**Section 69.** The King may lay down further provisions concerning patent applications and their processing, the Patent Register, the publication issued by the Patent Office, and the implementation of this Act in other respects. The journals of the Patent Office concerning filed patent applications shall be available to the public to the extent provided by the King.

The King may provide that the Patent Office, at the request of the official authorities of another country, supply information concerning the processing of patent applications filed in this country, and that novelty searches of patent applications may be carried out by a similar authority in another country or by an international institution.

The King may further provide that an applicant who has filed a corresponding patent application in another country, within a certain time limit from the filing of the application in this country, be obliged to submit information that has been communicated to him by the patent authority of that country as to the result of the examination as to patentability of the invention. However, a decree concerning such obligation to submit information shall not include patent applications referred to in Chapter 3 which have been subjected to international preliminary examination and where a report on the results has been submitted to the Patent Office.

**Section 70.** The King may, when found necessary because of war or risk of war and situations of crisis connected therewith, provide that the right to an invention shall be assigned to the Government or to another party designated by the King. Compensation shall be paid for the assigned right which shall be stipulated by official assessment, if no amicable settlement has been reached.

If right to an invention has been assigned to a party other than the Government in accordance with the first paragraph, and if the party concerned has not met his liabilities, the government shall, at the request of the party entitled to compensation, be obliged to pay the compensation promptly.

**Section 71.** Inventions of importance to the defense of the country shall be governed by a separate Act.

**Section 72.** With the exception of cases referred to in the second paragraph, the applicant for a patent who has failed to comply with a time limit prescribed in or pursuant to this Act and who thereby has suffered loss of rights shall, upon request, have his rights re-established if he can prove that he or his agent has taken all due care which may reasonably be required. Such request must be submitted in writing to the Patent Office within two months from the removal of the cause of the failure to comply with the time limit and not later than one year from the expiration of the time limit. Within the same time limit the omitted act must be completed and the prescribed fee paid.

The provisions of the first paragraph shall apply correspondingly to a patentee who has not paid the annual fee within the time limit prescribed in Section 41, third paragraph or Section 42, third paragraph. However, in such case the request for re-establishment of rights must be submitted and the annual fee paid not later than six months from the expiration of the time limit.

The first paragraph shall not apply to the time limits prescribed in Section 6, first paragraph and Section 25, second paragraph.

The first paragraph, cf. the third paragraph, shall apply correspondingly to international patent applications proceeded with in Norway in the case of failure to comply with the time limits of the Receiving Office, an International Searching Authority, an International Preliminary Examination Authority or the International Bureau. The omitted act shall be completed towards the Patent Office.

**Section 73.** If the applicant in the cases referred to in Section 31 or 38 has sent a document or a fee by post and the Patent Office does not receive the mail in due time, the rights shall always be re-established if the act is completed within two months from the time when the applicant realized or ought to have realized that the time limit has not been complied with and not later than one year from the expiration of the time limit, and:

- (1) within the 10 days preceding the expiration of the time limit the postal service has been interrupted because of war, revolution, civil disorder, strike, natural calamity or other like reason in the locality where the sender is staying or has his place of business, and the mailing to the Patent Office has been effected within five days from the resumption of the postal service; or
- (2) the mailing was effected by registered mail to the Patent Office not later than five days prior to the expiration of the time limit. If the letter was not sent by airmail, this provision shall only apply if the sender has had reason to believe that the mail would arrive within two days from the date of mailing and if airmail was not available.

If the applicant wishes re-establishment of rights according to the first paragraph, he must, within the time limit prescribed in that paragraph, make a request to that effect in writing with the Patent Office.

**Section 74.** Where a patent application which has been made available to the public in accordance with Section 22 has been shelved or refused or if a patent has lapsed and the rights of the applicant are re-established according to the provisions of Sections 72 or 73, the Patent Office shall publish a notice to that effect.

Where anyone, after final refusal of the application, expiration of the time limit for the resumption of the shelved application or lapse of the patent, but before publication in accordance with the first paragraph has been made, has started to exploit the invention commercially in this country in good faith, he may, notwithstanding the patent, continue the exploitation retaining its general character. Such right of exploitation shall also, on similar conditions, be enjoyed by anyone who has made substantial preparations to exploit the invention commercially in this country.

The right referred to in the second paragraph may only be transferred to others together with the business in which it originated or in which the exploitation was intended.

**Section 75.** The Head of the Patent Office shall designate the person who will make decisions on requests for re-establishment of rights according to Sections 72 and 73. The applicant or the patentee may appeal against refusal of such requests to the Board of Appeals of the Patent Office. The provisions of Section 25 shall apply accordingly.

**Section 76.** Entry into Force and Transitional Provisions:

(1) This Act shall enter into force on January 1, 1968. Subject to items 2 to 8, below, the Patents Act of July 2, 1910, with later amendments shall be repealed simultaneously. However, as regards inventions concerning foodstuffs and medicines, a patent shall not be granted for the actual product, but only for the process for its production, until the King provides otherwise.

(2) Subject to what is stated below, this Act shall also apply to patents which have been granted or are granted in accordance with the previous legislation.

The right to exploit an invention in accordance with Section 7 of the previous Act shall retain its validity, notwithstanding the requirements of Section 4 of this Act.

(3) A patent which has been granted or is granted in accordance with the previous legislation shall only be invalidated in accordance with the provisions of that legislation.

(4) Anyone who, when the provisions of this Act enter into force, commercially exploits an invention in this country for which a patent could not have been granted according to Section 1 of the previous Patents Act, or who has made substantial preparations for such exploitation, shall have the right to continue the exploitation in accordance with the provisions of Section 4 of this Act, even where the exploitation has started or preparations for the exploitation have been made after the filing of a patent application.

(5) If an invention has been made available to the public prior to the entry into force of this Act as a result of acts performed by the applicant or his predecessor in title and if a patent application has been filed not later than on July 1, 1968, Section 2 of the previous Patents Act shall be applicable as to the decision of the question of whether those acts are an obstacle to a patent or a ground for invalidity of a granted patent.

(6) Applications which are under processing in the Patent Office at the entry into force of the new Act shall be processed and decided upon in accordance with the provisions of the previous legislation, provided that it has been decided to lay the application open to public inspection in accordance with Section 26 of the previous Patents Act.

(7) Applications which have been filed prior to the entry into force of this Act shall not, notwithstanding the provisions of Section 22, be made available to the public until six months from the date of entry into force, unless the application has been laid open to public inspection prior to that time or the applicant requests that the application be made available.

(8) Annual fees for a patent year starting prior to July 1, 1968, shall be paid in accordance with the provisions of the previous Patents Act. For patents granted prior to September 1, 1953, annual fees shall also be paid in accordance with the provisions of the previous Patents Act.

**Sections 77.** Amendments of other Acts.

Act No. 35 of June 8, 1979



I. ....

II. This Act shall enter into force on the date decreed by the King. He may decree that those provisions of Chapter 3 which only concern the processing of applications subjected to international preliminary examination and those provisions of Sections 8 and 22 which concern the deposit of cultures of microorganisms shall enter into force on a later date.

III.

1. This Act shall apply to patent applications which, on the date of entry into force of the Act, are pending before the Patent Office, provided that the laying open of the application to public inspection has not been approved prior to that date. The following exceptions shall apply:

(a) applications for a patent of addition shall be processed and decided upon in accordance with the previous provisions;

(b) the previous Section 9 shall apply instead of the new Section 8;

(c) the previous Section 20 shall apply.

2. This Act shall also apply to patents which have been or are granted according to the previous legislation. The following exceptions shall apply:

(a) the duration of patents granted on the basis of applications filed more than 12 years prior to the entry into force of this Act, shall be governed by the previous Section 40;

(b) if a patent has lapsed under Section 51, first paragraph, prior to the entry into force of this Act, the previous Section 51, second, third and fourth paragraphs, and Section 55, second sentence, shall continue to apply;

(c) the previous Section 60 and the previous provisions concerning invalidity of patents shall apply;

(d) the previous provisions concerning patents of addition shall thereto.

*Act No. 30 of May 24, 1985*

I. ....

II. ....

III. Entry into Force and Transitional Provisions

1. This Act shall enter into force on the date decreed by the King. The various provisions may enter into force on different dates.

2. Section 52, first paragraph, subparagraph 2, of the previous Act shall apply to patents granted before the amendments of Section 52 enter into force.

3. The amendments of the provisions on annual fees shall not apply to a patent application which has been filed before the amendments have entered into force. The previous provisions shall apply to patents which have been or are granted on basis of such application. However, Section 41, first paragraph, first sentence, as amended by this Act, shall apply correspondingly.

4. In a patent application which has been filed before the amendments of Section 14 entered into force, a request under that Section may be made within a period of two years from the entry into force of this Act.

*Royal Decree of October 13, 1989*

In accordance with the Patents Act of December 15, 1967, Section 76 paragraph 1, it is decreed that:

As from January 1, 1992, patents on foodstuffs and medicines may be granted for the actual product as far as patent applications filed later than the said date are concerned.