

## **Patents Act**

*(Act No. 9 of December 15, 1967, Act No. 104 of December 20, 1996, Act. No. 127 of December 19, 2003 as last amended by Act. No 20 of May 2004. )*

**Norwegian title:** *Lov om patenter.*

*(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, No. 40 of June 24, 1994, No. 82 of December 22, 1995, No. 104 of December 20, 1996, No. 127 of December 19, 2003 and No. 20 of May 7 2004.)*

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*The Table of Contents is not a part of the Act. It has been included for the purposes of information.*

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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.

Subject matters not regarded as inventions include anything which merely consists of:

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. presentations of information.

Nor shall methods for surgical or therapeutic treatment or diagnostic methods, practiced 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 use of which would be contrary to morality or public order;
2. plant or animal varieties or essentially biological processes for the production of plants

or animals. Patents may, however, be granted for microbiological processes and the products thereof.

An invention may also constitute a patentable invention when it concerns a product consisting of or containing biological material, or a process by means of which biological material is produced, processed or used. Biological material, which is isolated from its natural environment or produced by means of a technical process, may be the subject of an invention even if it previously occurred in nature. Biological environment means, for the purpose of this legal text, material that contains genetic information, and can reproduce itself or be reproduced in a biological system.

A patent cannot be granted in respect of plant or animal varieties. Inventions that concern plants or animals may, however, be patentable if usage of the patent is not technically limited to one particular plant or animal variety. The King may, by regulation, determine what should be considered a plant or an animal variety.

Neither can a patent be granted for what are essentially biological processes to produce plants or animals. An essentially biological process means, for the purpose of this legal text, a process, which consists entirely of natural phenomena such as crossing or selection. A Patent may, on the other hand, be granted for microbiological or other technical processes or for a product produced by such a process. A microbiological process means, for the purpose of this legal text, any process involving, performed upon or resulting in microbiological material.

Amended by Act No. 35 of June 8, 1979 and by Act No. 127 of December 19, 2003.

Section 1a .The human body, at all of the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene, cannot constitute patentable inventions.

An element which is isolated from the human body or otherwise produced by means of a technical process, including the sequence of a gene, may constitute a patentable invention, even if the structure of that element is identical to that of a naturally existing element.

Added by Act No. 127 of December 19, 2003.

Section 1 b. Inventions shall be considered unpatentable where their commercial exploitation would be contrary to ordre public or morality.

Such exploitation shall not be deemed so contrary merely because it is prohibited by law or regulation.

On the basis of the first paragraph the following, in particular, shall not be patentable

1. processes for cloning human beings,
2. processes for modifying the genetic identity of human sex cells,
3. use of human embryos for industrial or commercial purposes, and
4. processes for modifying the genetic identity of animals, which are likely to cause them, suffering without any substantial medical benefit to man or animal, including animals resulting from such process.

Added by Act No. 127 of December 19, 2003.

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, in lectures, 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 to 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.

Amended by Act No. 35 of June 8, 1979.

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 patent holder may, without his consent, exploit the invention by:

1. producing, offering for sale, 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, whilst knowing, or it being obvious from the circumstances, that the use of the process is prohibited without the consent of the patent holder, offering the process for use in this country;
3. offering for sale, 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 patent holder 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 from the circumstances, that the means are suitable and intended for such exploitation. If the means are staple commodities, 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 outside the course of professional activity.

2. Exploitation of products protected by the patent which have been put on the market in the European Economic Area by the patent holder or with his consent, if this is not determined differently by regulation laid down by the King.
3. Exploitation by experiment relating to the subject matter of the invention.
4. Preparation in a pharmacy of a medicine in accordance with a prescription in individual cases, or acts carried out with a medicine so prepared.

Amended by Acts No. 35 of June 8, 1979, No. 113 of November 27, 1992 and, and No. 20 of May 7, 2004.

Section 3 a .The protection conferred by a patent on biological material possessing specific characteristics as a result of the invention shall extend to any biological material derived from that biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.

The protection conferred by a patent on a process that enables biological material to be produced possessing specific characteristics as a result of the invention, shall extend to biological material directly obtained through that process and any other biological material derived from the directly obtained biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.

The protection conferred by a patent on a product containing or consisting of genetic information shall extend to all material, save as provided in section 1 a, in which the product is incorporated and in which the genetic information is contained and performs its function.

The protection referred to in paragraphs 1-3 shall not extend to biological material obtained from the propagation or multiplication of biological material placed on the market within the EEA by the holder of the patent or with his consent, where the multiplication or propagation necessarily results from the application for which the biological material was marketed, provided that the material obtained is not subsequently used for other propagation or multiplication.

Added by Act No. 127 of December 19, 2003.

Section 3 b. If plant-propagating material is sold or transferred, with the consent of the patent holder, to a farmer for agriculture use this shall imply authorization for the farmer to use the product of his harvest for propagation or multiplication on his own farm notwithstanding section 3 a paragraphs 1-3.

If breeding stock or other animal reproductive material is sold or transferred, with the consent of the patent holder, to a farmer, the farmer shall have the right to use the protected animal or the reproductive material for an agriculture purpose on his own farm notwithstanding section 3a paragraphs 1-3. The last sentence does not provide the right to sell the material referred to as a component of or for the purpose of commercial reproductive activity.

The King may, by regulation, determine the conditions and the extent of the farmer's rights according to this section.

Added by Act No. 127 of December 19, 2003.

Section 3 c. The protection conferred by a patent on biological material, which already exists

in nature, shall only extend to the part of the material that is necessary for the industrial application specified in the patent application. It shall be evident from the patent application how the biological material may be used for industrial purposes.

Added by Act No. 127 of December 19, 2003.

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, whilst 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 in conjunction with the enterprise in which it has arisen or in which the exploitation was intended.

Section 5. An invention may, notwithstanding a patent, be utilized 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 that, notwithstanding a patent, spare parts and accessories for aircraft may 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 filing date 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 deemed to have been filed on the same date as the earlier application, if the applicant so requests. The King may issue regulations prescribing that applications which are not filed in a State party to the Paris Convention may also form the basis for priority as mentioned in the first period. The King shall prescribe the particulars concerning the right to claim priority as referred to above.

Amended by Acts No. 35 of June 8, 1979 and No. 82 of December 22, 1995.

## **Chapter 2 The Patent Application and Its Processing, Etc.**

Section 7. The patent authority of this country is the Patent Office.

Amended by Act No. 35 of June 8, 1979.

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, with a patent authority or an international organization as referred to in section 28.

The application shall contain a description of the invention, including drawings where 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 disclosed 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 or uses biological material, in the cases referred to in section 8a, only be considered to be 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 patent claims. The abstract shall merely serve as technical information and may not be taken into account for any other purpose.

The inventor shall be identified by name in the application. If a patent is applied for by someone other than the inventor, the application shall contain a declaration from the applicant stating his right to the invention. If the Patent Office finds reason to doubt the applicant's right to the invention, the right can be required proven.

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 upon.

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

Amended by Acts No. 35 of June 8, 1979, No. 30 of May 24, 1985 and No. 127 of December 19, 2003.

Section 8a. If, when carrying out an invention, this involves the use of biological material which is not available to the public and cannot be described in the application documents in such a manner as to enable a person skilled in the art to carry out the invention on the basis thereof, a sample of the biological material shall be deposited not later than on the date of filing of the application. The sample shall thereafter always be deposited so that anyone who under this Act is entitled to be furnished with a sample of the biological material should be furnished with a sample in Norway. The King shall decree where deposits may be made. If a deposited culture of a microorganism ceases to be viable or a sample of the culture cannot be furnished for other reasons, it may be replaced by a new 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 deemed to have been made on the date that the previous deposit was made.

Amended by Act No. 30 of May 24, 1985 and by Act No. 127 of December 19, 2003

Section 8 b. If an invention concerns or uses biological material, the patent application shall include information on the country from which the inventor collected or received the material (the providing country). If it follows from the national law in the providing country that access to biological material shall be subject to prior consent, the application shall state whether such consent has been obtained.

If the providing country is not the same as the country of origin of the biological material, the application shall also state the country of origin. The country of origin means the country from which the material was collected from its natural environment. If the national law in the country of origin requires that access to biological material shall be subject to prior consent, the application shall state whether such consent has been obtained. If the information set out in this subsection is not known, the applicant shall state that.

The duty to disclose information under the first and second paragraphs applies even where the inventor has altered the structure of the received material. The duty to disclose information does not apply to biological material derived from the human body. Breach of the duty to disclose information is subject to penalty in accordance with the General Civil Penal Code § 166. The duty to disclose information is without prejudice to the processing of patent applications or the validity of rights arising from granted patents.

Added by Act No. 127 of December 19, 2003.

Section 8 c. If an invention concerns or uses biological material from the human body, the patent application shall include information on whether the person from whom the material has been derived has given his/her consent to the use of the biological material, in accordance with the law of 21st February 2003 no 12 about bio banks. Breach of the duty to disclose information is subject to penalty in accordance with the General Civil Penal Code § 166. The duty to disclose information is without prejudice to the processing of patent applications or the validity of rights arising from granted patents.

Added by Act No. 127 of December 19, 2003.

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.

Amended by Act No. 35 of June 8, 1979.

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

Section 11. If patent is sought for an invention disclosed in a patent application previously filed by the applicant, but not yet decided upon, the later 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 a representative domiciled in this country who can represent him in all matters concerning the application.

Section 13. A patent application 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 it was filed.

Amended by Act No. 104 of December 20, 1996.

Section 14. (Repealed by Act No. 104 of December 20, 1996.)

Section 15. If the applicant has not complied with the prescribed requirements with respect to the application, or if the Patent Office finds other obstacles to the 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 found necessary without consulting the applicant. If the applicant fails, within the time limit, to submit observations or to take steps to correct a defect which has been pointed out, 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 steps to make corrections for resumption of the processing within four months from the expiration of the said time limit. The prescribed fee shall be paid. 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.

Amended by Acts No. 35 of June 8, 1979 and No. 30 of May 24, 1985.

Section 15 a. If the Patent Office is in doubt whether a patent should be granted or refused based on section 1 b, the Patent Office shall obtain an advisory statement from an ethics committee appointed by the King, before making a decision. The ethics committee shall give their advisory statement within three months of receiving the request. The King may, by regulation, determine specific rules for the committee's procedures.

Added by Act No. 127 of December 19, 2003.

Section 16. If, subsequent to the receipt of the applicant's reply, the Patent Office still finds an 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, invite the party concerned to bring the matter before the courts of law within a specified time limit, whilst drawing to his attention that if he does not comply with this requirement, his claim may be disregarded in the further processing of the case.

If an 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 proves to the satisfaction of 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 a final decision has been made with respect to the request.

Section 19. If the application complies with the prescribed requirements and there are no obstacles to the grant of a patent, the applicant shall be notified that a patent may be granted. Subsequent to the applicant having been notified that a patent may be granted, the patent claims may not be amended so as to extend the scope of the patent protection.

Amended by Acts No. 35 of June 8, 1979, No. 82 of December 22, 1995 and No. 104 of December 20, 1996.

Section 20. The applicant shall pay the prescribed fee for grant within two months from being notified by the Patent Office that a patent may be granted. Failure to do so will result in the application being shelved. However, the processing of the application shall be resumed if the applicant pays the said fee as well as the prescribed fee for the resumption of the processing of the application 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 notification that a patent may be granted, he requests exemption from payment of the fee for grant, the Patent Office may grant such exemption if the payment of the fee shall 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.

Amended by Acts No. 35 of June 8, 1979 and No. 82 of December 22, 1995.

Section 21. When the fee for grant under section 20 has been paid or exemption from payment of such fee has been granted, the application shall be accepted provided that there are still no obstacles to the grant of a patent. A notice of the decision shall be published.

When a notice of the decision to accept the application has been published, the patent is granted.

Simultaneously with the grant of the patent, the Patent Office shall publish a patent specification. The patent specification shall include a description, patent claims, an abstract, and the names of the patent holder and the inventor.

When the patent is granted, a letters patent shall be issued.

Patents granted shall be entered in the Register of Patents kept by the Patent Office. Anyone shall be entitled to examine the Register of Patents, to obtain certified extracts there from and to obtain copies of patent applications which have been made available to the public according to section 22.

Amended by Acts No. 35 of June 8, 1979 and No. 82 of December 22, 1995.

Section 22. All documents of the application shall be made available to the public as of the date on which the patent was granted.

When 18 months have passed from the filing date of the application or, if priority under section 6 has been claimed, from the date from which priority is claimed, the documents shall be made available to the public even if a patent has not yet been granted. 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 in the first or second paragraph.

When the documents become available to the public under the second or third paragraph, a notice to that effect shall be published by the Patent Office.

If a document contains trade secrets which do not relate to an invention for which patent has been sought or granted, the Patent Office may, upon request and where there are special circumstances which make it desirable, decide that the document shall not be made available to the public. If such 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 26, fourth paragraph.

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

If a sample of biological material has been deposited according to section 8a, anyone has the right to be furnished with a sample of the material when the documents of the application have been made available in accordance with the first, second or third paragraph. After a patent has been granted anyone who requests a sample of the material shall be furnished with a sample, even if the patent has been determined or annulled. This does not mean, however, that a sample shall be issued to anyone who in consequence of a law or regulation is not entitled to handle the deposited material. Moreover, the provision of the first period does not mean that a sample shall be issued to anyone whose handling of the sample must be assumed to involve considerable risk due to the harmful properties of the material.

Until a patent has been granted or the application has been finally decided upon without a patent having been granted, the applicant may, notwithstanding the provisions of the seventh paragraph, request that a sample only be issued to a specially appointed expert. If the patent application has been refused or withdrawn the same rule applies for a period of 20 years from the date when the patent application was filed. The King shall prescribe a time limit for submitting a claim to limit issuing of the materail and shall determine who may be appointed as an expert.

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

Amended by Acts No. 35 of June 8, 1979, No. 30 of May 24, 1985 ,No. 82 of December 22, 1995 and by Act No. 127 of December 19, 2003.

Section 23. If an application which is available to the public is shelved or refused, a notice of this decision shall be published when it is final.

Amended by Act No. 82 of December 22, 1995.

Section 24. Any person may file an opposition to a granted patent. A notice of opposition shall be filed in writing, state the grounds for the opposition, and reach the Patent Office within nine months from the date of grant of the patent. Under special circumstances, the Patent Office may grant a short additional time limit in which to provide further documentation in support of the opposition.

The closing date for submitting an opposition based the patent being in conflict with section 1 b, is three years from the date the patent was granted. Any person who files such an objection

later than nine months after this date shall pay a prescribed fee.

An opposition founded on the claim that the patent has been granted to someone other than the person entitled to the patent under section 1, may only be filed by the person claiming to be entitled to the patent. The opponent may request in the opposition that the patent be transferred to him.

The Patent Office shall refuse an opposition which does not fulfill the conditions referred to in the first and second paragraphs.

The Patent Office shall notify the patent holder of oppositions and shall give him an opportunity to file observations on them. During the opposition procedure, section 12 shall apply correspondingly to the patent holder.

If an opposition has been filed, this fact shall be recorded in the Register of Patents and a notice thereof shall be published.

Even if the opposition is withdrawn the processing thereof may continue provided that special reasons exist therefore.

Amended by Acts No. 30 of May 24, 1985, No. 82 of December 22, 1995 and by Act No. 127 of December 19, 2003.

Section 25. Subsequent to an opposition the Patent Office shall revoke the patent if

1. it has been granted despite the fact that the conditions laid down in sections 1 and 2 are not fulfilled;
2. it relates to an invention which is not disclosed in a manner sufficiently clear as to enable a person skilled in the art to carry out the invention on the basis of the description; or
3. the subject matter extends beyond the content of the application as filed.

If the opponent claims that he is entitled to the patent and has requested that the patent be transferred to him, the Patent Office shall transfer the patent instead of revoking it, provided that it finds that, according to section 1, the opponent is entitled to the patent. section 53 shall apply correspondingly.

The Patent Office shall reject the opposition if there is no obstacle as referred to in the first paragraph to the maintenance of the patent. If the Patent Office is in doubt whether a patent has been granted in conflict with section 1b, the Patent Office shall obtain an advisory statement as in section 15 a.

If, during the opposition procedure, the patent holder has made such amendments that there is no obstacle to the maintenance of the patent as amended for reasons referred to the first paragraph, and the said amendments do not represent an extension of the scope of protection of the patent beyond the patent as originally granted, the patent shall be maintained as amended.

When the decision of the Patent Office regarding an opposition is final, a notice of the decision shall be entered in the Register of Patents and shall be published. If the decision entails the maintenance of the patent in an amended form, the Patent Office shall issue a new patent specification and a new letters patent and shall enter the new patent in the Register of Patents.

Amended by Acts No. 35 of June 8, 1979 , No. 82 of December 22, 1995 and by Act No. 127 of December 19, 2003.

Section 26. If the final first instance decision with respect to an application has gone against the applicant, he may file an appeal against the decision with the second instance department of the Patent Office (the Board of Appeals).

If final first instance decision in an opposition case has gone against the patent holder or the opponent, the party concerned may file an appeal against the decision with the Board of Appeals.

The applicant may file an appeal against 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 with the Board of Appeals. A decision refusing a request for transfer under section 18 may be appealed against by the requester.

The requester may file an appeal against a decision refusing a request under section 22, fifth or ninth paragraph, with the Board of Appeals.

Amended by Act No. 82 of December 22, 1995.

Section 27. 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 shall be paid. If these provisions are not complied with, the appeal shall not be submitted for consideration.

Even if the opponent withdraws his appeal, it may be examined if special circumstances make it desirable.

A decision by the Board of Appeals refusing a patent application, revoking a patent, or maintaining a first instance decision to revoke a patent may not be brought before the courts of law later than two months from the date on which the applicant or patent holder was notified of the decision. Information with respect to the time limit for instituting proceedings shall be given in the notification.

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

Amended by Act No. 82 of December 22, 1995.

### **Chapter 3 International Patent Applications**

Section 28. "International patent application" means an application filed in accordance with the Patent Cooperation Treaty, done at Washington on June 19, 1970 (the PCT).

International patent applications shall be filed with the national patent authorities or international organizations which, according to the PCT, are authorized 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 to 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 period, shall

only apply if the application enters the national phase in accordance with section 31.

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

Section 31. If the applicant wishes an international patent application to enter the national phase in Norway, he must, within 31 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 by the King, or if the application is in Norwegian, a copy thereof. The applicant shall pay the prescribed fee to the Patent Office. The Translation or transcription may be submitted within a further two-month limit against a prescribed fee.

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

Amended by Act No. 30 of May 24, 1985 and by Act No.127 of December 19, 2003.

Section 32 (Repealed by Act No. 127 of December 19, 2003.)

Section 33. If an international patent application has entered the national phase under 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 the processing thereof. However, the processing of the application may not, without the consent of the applicant, be initiated until the expiration of the time limit according to section 31 first paragraph.

The provisions in sections 8 b and 8 c do not apply to international applications. The provisions of section 12 shall only apply from the date on which the Patent Office is allowed to start the processing of the application.

The provisions of section 22 shall also apply prior to the entry of the application into the national phase, 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 relating to the form and contents, it shall be accepted in those respects.

Amended by Act No. 30 of May 24, 1985 and by Act No. 127 of December 19, 2003.

Section 34. An international patent application shall not be accepted, nor shall it be refused, until the expiration of the time limit prescribed by the King, unless the applicant consents to a decision with respect to the application prior thereto.

Amended by Acts No. 30 of May 24, 1985 and No. 82 of December 22, 1995.

Section 35. An international patent application shall not, without the consent of the applicant, be accepted or published in print or in any similar manner until it has been published by the International Bureau of the World Intellectual Property Organization (WIPO) unless 20 months have elapsed from the international filing date. If priority is claimed according to section 6, the time limit of 20 months shall be computed from the date from which priority is claimed.

Amended by Act No. 82 of December 22, 1995.

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 was found 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 the finding to determine if it 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 notified him of its decision. If the Patent Office determines 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 27 regarding the time limit for appeal and regarding the opportunity for instituting legal proceedings shall apply correspondingly.

If the Board of Appeals upholds the first instance decision, the time limit for payment of such fee as referred to in the first paragraph, second period, shall be computed from the date on which the Patent Office sent the applicant a notification of the Board of Appeals decision.

Amended by Act No. 82 of December 22, 1995.

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 at 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 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 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 period, 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.

Amended by Act No. 30 of May 24, 1985.

#### **Chapter 4 The Extent and Duration of the Patent**

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

Section 39a. A patent holder may request that the patent claims or the description shall be amended in order to limit the scope of the patent protection (patent limitation).

A request for patent limitation shall be filed in writing with the Patent Office. The request may not be filed before the time limit for filing opposition has expired and not before oppositions, if any, have been finally decided upon. If an action has been brought before the courts of law for transfer of the patent, or if a distraint has been put thereon, a request for patent limitation may not be filed until final decision has been taken with respect to the action or the distraint no longer applies.

The patent holder shall pay the prescribed fee for the limitation procedure.

Added by Act No. 82 of December 22, 1995 and amended by Act No. 127 of December 19, 2003.

Section 39b. If the request complies with the prescribed requirements, the Patent Office shall consider whether the patent as amended will comply with the requirements of sections 1 - 2, and whether it will apply to an invention which is described sufficiently clearly as to enable a person skilled in the art to carry out the invention on the basis of the description.

If the Patent Office finds that there are no obstacles to granting the request, the patent shall be limited accordingly. The limitation shall take effect from the date on which notice thereof is published.

Added by Act No. 82 of December 22, 1995 and amended by Act No. 127 of December 19, 2003.

Section 39c. If the patent holder has not complied with the requirements prescribed for the request, or if the Patent Office finds that there are other obstacles to the acceptance thereof, the patent holder shall be notified to that effect and be invited to submit observations or to correct the request within a specified time limit.

If the patent holder fails, within the time limit, to submit observations or to take steps to

correct a defect which has been pointed out, the request shall be rejected. Information to that effect shall be given in the notification from the Patent Office referred to in the first paragraph.

If the Patent Office, subsequent to the receipt of the reply from the patent holder, finds any obstacle to granting the request and the patent holder has been given the opportunity to comment on the obstacle, the request shall be refused, unless the Patent Office finds that further correspondence is required.

Added by Act No. 82 of December 22, 1995.

Section 39d. If the final decision with respect to the request in the first instance department of the Patent Office does not imply that the patent shall be limited in accordance with the request, the patent holder may file an appeal with the Board of Appeals.

The appeal must be received by the Patent Office within one month from the date on which notification of the decision was sent to the patent holder. Within the same time limit the prescribed appeal fee must be paid. If these requirements are not complied with, the appeal shall not be submitted for consideration.

The patent holder may bring the decision with respect to an appeal before the courts of law, but not later than one month from the date on which he was notified of the decision. Information of the time limit for instituting legal proceedings shall be given in the notification.

Added by Act No. 82 of December 22, 1995.

Section 39e. If a patent is limited in accordance with the provisions of this Chapter, a notice to that effect shall be published. The Patent Office shall then issue a new patent specification and a new letters patent, and the patent as limited shall be entered in the Register of Patents.

Added by Act No. 82 of December 22, 1995.

Section 40. A granted patent 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 patent holder, 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.

Amended by Acts No. 35 of June 8, 1979 and No. 30 of May 24, 1985.

## **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 earlier than six months before the due date. 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 second instance decision 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 latter date.

For a later application as referred to in section 11, the annual fees for fee years beginning before the date on which the later 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 under 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.

Amended by Acts No. 35 of June 8, 1979 and No. 30 of May 24, 1985.

Section 42. If the inventor is the applicant or the patent holder and the Patent Office finds that the payment of the annual fee involves considerable difficulties for him, the Patent Office may grant an extension of the time limit, provided he requests this not later than 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 patent holder 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. Licence, transfer, etc.**

Section 43. If the patent holder has granted someone else the right to exploit the invention commercially (licence), the licensee may not transfer his right to others, unless an agreement to the contrary has been made or shall be deemed to have been made.

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

Where a licence which has been recorded in the Register has terminated, this fact shall also 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 licence, as well as to a right under section 53, third paragraph. Registration of distraints is regulated by the Enforcement Act, section 7-20, eighth paragraph.

Legal proceedings concerning a patent may always be brought against the party 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 licence, the recording of which has been requested, and a transfer or grant of a licence, 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.

Amended by Acts No. 2 of February 8, 1980 and No. 86 of June 26, 1992.

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 in this country to a reasonable extent, anyone who wishes to work the invention in this country may obtain a compulsory licence for that purpose, provided there is no legitimate reason for the failure to work the invention.

For the purpose of the first paragraph, utilization of the invention shall, in contracting states in the WTO treaty or the EEA, be given equal status as utilization within this country, provided that the patent rights do not prevent national imports. The same applies for utilization in other states, to the extent it complies with a reciprocal duty following an international treaty.

Amended by Act No. 127 of December 19, 2003.

Section 46. The holder of a patent for an invention, the use of which is dependent on a patent owned by someone else, may obtain a compulsory licence to use the invention protected by the latter patent provided that the former invention involves an important technical advance of considerable economic significance in relation to the latter invention.

The holder of the patent for the invention to which the compulsory licence applies shall be entitled to obtain a compulsory licence on reasonable terms to use the other invention.

Amended by Act No. 104 of December 20, 1996.

Section 46 a. Where a breeder cannot acquire or exploit a plant variety right without infringing a prior patent, he may, subject to payment of an appropriate royalty, apply for a compulsory licence for non-exclusive use of the invention protected by the patent inasmuch as the licence is necessary for exploitation of the plant variety to be protected. A compulsory licence will only be granted where the applicant can demonstrate that the plant variety constitutes significant technical progress of considerable financial interest in relation to the invention.

Added by Act No. 127 of December 19, 2003.

Section 47. Any person who wants to exploit an invention commercially, which has been patented by someone else, may be given a compulsory licence

1. when required by important public interests.
2. when the patent rights are exploited in a way that significantly limits competition.

Amended by Act No. 127 of December 19, 2003.

Section 48. Anyone who, at the time 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 licence for the exploitation of the invention, provided that special circumstances 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 licence may also comprise the time preceding the grant of the patent.

Section 49. A compulsory licence may only be granted to someone who has made efforts to obtain a licence on reasonable business terms by agreement, without achieving it in reasonable time, and may be presumed able to exploit the invention in a manner which is acceptable and which is in compliance with the terms of the licence.

A compulsory licence shall not prevent the patent holder from exploiting the invention himself or from granting licences.

A compulsory licence shall only be assignable in conjunction with the enterprise where it is exploited or in which the exploitation was intended. Furthermore, a compulsory licence obtained according to the first paragraph of section 46 may only be assigned in conjunction with the dependent patent.

In the case of semi-conductor technology, compulsory licences shall only be granted for public non-commercial use or to remedy practice determined after judicial or administrative process to be anti-competitive or based on section 47 nr.2.

A compulsory licence shall mainly be given with the aim of supplying the domestic market. The King may, by regulation, determine provisions which depart from this.

Amended by Act No. 104 of December 20, 1996, and by Act No. 127 of December 19, 2003.

Section 50. The court shall grant a compulsory licence in accordance with this section, and the Norwegian Competition Authority in accordance with section 50 a, In a decision considering a compulsory licence, the court shall also determine to what extent the invention may be exploited and stipulate the compensation and the other terms of the licence. The compensation shall be appropriate, taking into account the circumstances in each case. The value of the licence shall be taken in consideration when assessing the compensation.

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

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

Amended by Act No. 29 of June 14, 1991, and by Act No. 127 of December 19, 2003.

Section 50 a. A request for a compulsory licence made to the Norwegian Competition

Authority, shall state the grounds for the request and provide details of the circumstances referred to in section 49 first paragraph. The claim shall set out the scope of the licence and compensation and any further conditions the party considers reasonable. A prescribed fee shall be paid. If the application does not fulfil these requirements, The Norwegian Competition Authority shall grant a reasonable period of time for rectification. The demand shall be rejected if the deficiency in the request is not rectified within the time limit, unless the Norwegian Competition Authority finds reasons to grant a new period of time for rectification.

The Norwegian Patent Office, Board of Plant Varieties, or any other public agency shall, upon request from the Norwegian Competition Authority or the Board of Appeals, provide an opinion on the case within 6 weeks from the date of the request.

Anyone can provide the Norwegian Competition Authority or the Board of Appeals with the information these authorities require in connection with cases concerning compulsory licences. The Norwegian Competition Authority may summon the parties to an oral hearing if necessary. The King may, by regulation, determine specific rules for the procedures.

The regulation in section 50 third paragraph apply correspondingly for cases under this section, nevertheless the Norwegian Competition Authority or the Board of Appeals do not have the authority to cancel or amend a licence which has been granted or tried by a court of law.

For implementation of an administrative decision, the Public Administration Act section 42 applies. If the compulsory licence is cancelled or limited following a challenge or a lawsuit filed within two months of the Norwegian Competition Authority's or the Board of Appeals' decision, the licence holder is obliged to pay reasonable compensation for the economic loss the exploitation has caused. The Norwegian Competition Authority or the Board of Appeals may in the decision concerning the compulsory licence require as a condition that the licence holder provide security for the liability, in accordance with this paragraph's second sentence.

In a lawsuit the court has full judicial power to review all aspects of the Norwegian Competition Authority's or the Board of Appeals' decision in accordance with this paragraph. A lawsuit may not be filed on the grounds that the decision on a compulsory licence has been dismissed summarily or rejected. A lawsuit, filed by the patent holder in accordance with this paragraph, must be brought against the holder of the compulsory licence.

Added by Act No. 127 of December 19, 2003.

## **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.

Amended by Acts No. 35 of June 8, 1979 and No. 30 of May 24, 1985.

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

1. it has been granted in spite of the fact that the requirements under sections 1 - 2 are not complied with;
2. it 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. it contains subject matter which was not disclosed in the application as filed;
4. the scope of protection of the patent has been extended after grant; or
5. after a request for patent limitation, the patent has been amended in such a way that the scope of protection has been extended.

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

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

Legal proceedings on the ground that the patent has been granted to someone other than the party entitled thereto 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 date on which 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 patent holder was in good faith when the patent was granted or when the patent was acquired, the proceedings must under no circumstances be brought later than three years from the grant of the patent.

Re-establishment of rights may not be granted following the failure to meet the time limits prescribed in the fourth paragraph.

Amended by Acts No. 35 of June 8, 1979, No. 30 of May 24, 1985, No. 82 of December 22, 1995, and by Act No. 127 of December 19, 2003.

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

The time limits under section 52, the 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 whilst retaining its general character. Such right shall also, on the same conditions, be enjoyed by holders of recorded licences. The right may only be transferred to others in connection with the enterprise in which the exploitation takes place or was intended to take place.

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

If legal 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 are finally settled 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.

Amended by Act No. 35 of June 8, 1979.

### **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 obliged to give that party access to the documents of the application. If the application involves the deposit of a sample of biological material 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, third and fourth sentences, and the eighth and ninth paragraphs shall apply correspondingly.

Anyone who, either by direct communication with someone else or by advertisement or by marking goods or the packaging thereof 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 obliged 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, as to whether a patent has been applied for or granted.

Amended by Act No. 30 of May 24, 1985, and by Act No. 127 of December 19, 2003.

### **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 penalized 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 of minor blame only.

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

Amended by Act No. 35 of June 8, 1979.

Section 59. In the event of patent infringement, the court may, in order to prevent further infringement, when so claimed and insofar as it is found reasonable, decide that a product protected by a patent which has been produced without the consent of the patent holder, 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 surrendered to the aggrieved against compensation.

The provisions of the first paragraph shall not apply 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, after the date on which the application documents have been made available to the public according to section 22, without permission exploits commercially an invention for which a patent has been applied, the provisions concerning patent infringement shall apply mutatis mutandis to the extent that the application results in a patent for the invention. However, in the period prior to the grant of the patent, the patent protection shall only extend to the subject matter disclosed both in the patent claims as worded when the application was made available to the public and in the patent claims of the patent as finally granted. No penalty may be imposed for exploitation of the invention prior to the grant of the patent. Compensation for damages resulting from exploitation before the grant of the patent may 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.

Amended by Acts No. 35 of June 8, 1979 and No. 82 of December 22, 1995.

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 judgement stating the invalidity or the transfer of the patent. An acquittal may, however, be based on the patent having been revoked or transferred according to section 25. Notwithstanding the first paragraph, an acquittal may be based on the patent being invalid before being limited by patent limitation, provided that the acquittal is not based on the patent as limited also being invalid.

Amended by Act No. 82 of December 22, 1995.

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 penalized 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 aggrieved party.

### **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.

In the case of protection certificates, the prescribed fees shall be paid for every fee year starting after the end of the patent term. In other respects the same rules apply to these annual fees as to the annual fees for patents.

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 a

representative 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.

Added by Act No. 40 of June 24, 1994.

Section 62b EEA Agreement attachment XVII article 6a (Regulation (EC) No. 1610/96 of the European Parliament and the Council concerning creation of a supplementary certificate for plant protection products) applies as law with the amendments and additions made by Protocol 1 to the agreement and the agreement as a whole.  
Section 62 a second to fifth paragraph applies correspondingly.

Amended by Act No. 98 of December 19 1998.

### **Chapter 10. Provisions on Legal Proceedings.**

Section 63. The following actions shall be brought before the Oslo City Court (Oslo byrett):

1. actions concerning the right to an invention for which a patent has been applied;
2. actions concerning a decision in which the Board of Appeals of the Patent Office has refused an application for a patent, has revoked a patent or confirmed a first instance decision to revoke a patent, cf. the third paragraph of section 27;
3. actions concerning requests for patent limitation, cf. the third paragraph of section 39d;
4. actions concerning invalidation or transfer of a patent, cf. sections 52 and 53; and
5. actions concerning compulsory licences, cf. sections 50 and 50 a.

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

Amended by Acts No. 29 of June 14, 1991, No. 82 of December 22, 1995 and by Act No. 127 of December 19, 2003.

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 licence shall simultaneously notify the Patent Office and, by registered letter, any licensee recorded in the Register of Patents whose address has been indicated in the Register to that effect. A licensee wishing to bring an action concerning infringement of the patent shall notify the patent holder 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 stipulate a time limit for sending the notifications. If the said time limit has not been complied with, the case shall be dismissed.

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

Section 66. In the cases referred to in section 63 the court shall send copies of its judgements to the Patent Office.

### **Chapter 11. Miscellaneous Provisions.**

Section 67. A patent holder who is not a resident of this country shall have a representative domiciled in this country who is recorded in the Patent Register to receive, on his behalf, service of process and other procedural notifications concerning the patent.

If the patent holder has no such representative, service may be effected by sending the document by registered letter to the address which is indicated in the Register of Patents. Section 178 of the Courts of Justice Act shall apply in such case. If a complete address is not recorded 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 the Norwegian Gazette (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 patent holders who are residents of the foreign country concerned or who have a representative residing in that country and recorded in the Register of Patents who is empowered in the manner prescribed in the first paragraph. The service of process or 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 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 fees. On alteration of the annual fees, he may, within the limitations referred to in section 76, item 8, provide that the new fees shall also apply to patents previously granted.

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

Amended by Acts No. 35 of June 8, 1979 and No. 30 of May 24, 1985.

Section 69. The King may lay down further provisions concerning patent applications and oppositions and the processing thereof, requests for patent limitation and the processing thereof, the Register of Patents, 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, should 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 of the 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 result thereof has been submitted to the Patent Office.

Amended by Acts No. 35 of June 8, 1979, No. 30 of May 24, 1985 and No. 82 of December 22, 1995.

Section 70. The King may, when found necessary because of war or danger 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 is reached.

If the 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 defence of the realm 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 representative 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 non-compliance 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. The prescribed fee shall be paid.

The provisions of the first paragraph shall apply correspondingly to a patent holder who has not paid the annual fee within the time limit prescribed in section 41, the 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 27, third 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 vis-à-vis the Patent Office.

Amended by Acts No. 35 of June 8, 1979, No. 30 of May 24, 1985 and No. 82 of December 22, 1995.

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 realised or ought to have realised that the time limit had not been complied with and not later than one year from the expiration of the time limit, and:  
the postal service has been interrupted in the 10 days preceding the expiration of term because of war, revolution, civil disorder, strike, natural disaster or other like reason in the locality where the sender is staying or has his place of business, and the document or fee has been sent to the Patent Office within five days from the resumption of the postal service; or  
the document or fee was sent 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, or if airmail was not available.  
Where the applicant wishes re-establishment of his rights according to the first paragraph, he must, within the time limit prescribed in that paragraph, file a request to that effect in writing with the Patent Office.

Amended by Acts No. 35 of June 8, 1979 and No. 30 of May 24, 1985.

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 after the lapse of the patent, but before the 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 whilst 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 in conjunction with the enterprise in which it has originated or in which the exploitation was intended.

Added by Act No. 35 of June 8, 1979.

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 patent holder may appeal against refusal of such requests to the Board of Appeals of the Patent Office. Section 27 shall apply correspondingly concerning the time limit for appeal etc., and for the opportunity to bring decisions of the Board of Appeals before the courts of law.

Added by Act No. 35 of June 8, 1979. Amended by Acts No. 30 of May 24, 1985 and No. 82 of December 22, 1995.

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.

Prescribed by Royal Decree of October 13, 1989 that with effect from January 1, 1992 patent for foodstuffs and medicines may be granted for the actual product insofar as applications filed after January 1, 1992 are concerned.

2 to 8: (Without practical significance. Omitted from the offprint.)

Added by Act No. 35 of June 8, 1979 (previous section 72).

Section 77. Amendments of other Acts - - -.

Added by Act No. 35 of June 8, 1979 (previous section 73).

Sist oppdatert: 04.10.04 ■