

# The Norwegian Patents Act

This is an unofficial translation of the Norwegian Patents Act. Should there be any discrepancies between this translation and the authentic Norwegian text, the decision will be made on the basis of the authentic Norwegian text.

**Norwegian title:** Lov av 15. desember 1967 nr. 9 om patenter (patentloven)

**English title:** Act No. 9 of December 15, 1967 on patents (The Norwegian Patents Act)

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*(The table of contents below 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. Within any technical field, 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 or operationally.

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.

Inventions may also constitute patentable inventions when they concern 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 already occurs in nature. Biological material 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.

A patent cannot 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 processes. A microbiological process means, for the purpose of this legal text, any process involving, performed upon or resulting in the production of microbiological material.

A patent shall not be granted for methods for surgical or therapeutic treatment or diagnostic methods, practiced on humans or animals. This provision shall not prevent the grant of patents for products, including substances and compositions of substances, for use in such methods.

Section 1 a. 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.

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.

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 in relation to what was known before the filing date of the patent application shall not prevent the grant of a patent for known substances or known compositions for use in the methods referred to in section 1, sixth paragraph, provided that the use of the substance or the composition of substances 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.

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.
5. Tests, experiments and the like on a patented medicine necessary to obtain marketing authorization for a medicine in a state party to the WTO Treaty.

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.

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.

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.

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 sentence.

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 is the Norwegian Industrial Property Office.

Section 8. An application for a patent shall be filed in writing with the Norwegian Industrial Property 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 Norwegian Industrial Property 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.

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.

Section 8 b. If an invention concerns or uses biological material or traditional knowledge, the patent application shall include information on the country from which the inventor collected or received the material or the knowledge (the providing country). If it follows from the national law in the providing country that access to biological material or use of traditional knowledge 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 or the traditional knowledge, the application shall also state the country of origin. The country of origin means for biological material the country from which the material was collected from its natural environment and for traditional knowledge the country in which the knowledge was developed. If the national law in the country of origin requires that access to biological material or use of traditional knowledge 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 concerning biological material 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. When the biological material is acquired in accordance with Art. 12 No. 2 and 3 of the International Treaty on Plant Genetic Resources for Food and Agriculture of November, 3, 2001, a copy of a standard material transfer agreement according to Art 12.4 of the Treaty shall accompany the patent application instead of the information mentioned in paragraphs two and three.

Breach of the duty to disclose information is subject to penalty in accordance with the General Civil Penal Code § 221. The duty to disclose information is without prejudice to the processing of patent applications or the validity of rights arising from granted patents.

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 § 221. The duty to disclose information is without prejudice to the processing of patent applications or the validity of rights arising from granted patents.

Section 9. If the applicant so requests and pays the prescribed fee, the Norwegian Industrial Property 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 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 Norwegian Industrial Property Office.

Section 12. (Repealed by Act No. 8 of March 26, 2010.)

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.

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 Norwegian Industrial Property 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 Norwegian Industrial Property 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 Norwegian Industrial Property 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.

Section 15 a. If the Norwegian Industrial Property Office is in doubt whether a patent should be granted or refused based on section 1 b, the Norwegian Industrial Property 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.

Section 16. If, subsequent to the receipt of the applicant's reply, the Norwegian Industrial Property 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 Norwegian Industrial Property Office finds that further correspondence is required.

Section 17. If anyone claims before the Norwegian Industrial Property Office that he, and not the applicant, is entitled to the invention, the Norwegian Industrial Property 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 Norwegian Industrial Property Office that he, and not the applicant, is entitled to the invention, the Norwegian Industrial Property 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.

Section 20. The applicant shall pay the prescribed fee for grant within two months from being

notified by the Norwegian Industrial Property 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 grant fee within four months from the expiration of the time limit. The prescribed fee for the resumption of the processing of the application shall be paid.

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 Norwegian Industrial Property 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.

Section 21. When the grant fee pursuant to section 20 has been paid or exemption from the fee has been granted, the application shall be accepted if there is still no obstacle to a patent being granted. Notice of the decision shall be published.

When notice of the decision to accept the application has been published, the patent is granted. A patent can be granted in Norwegian or English.

At the same time as the patent is granted, the Norwegian Industrial Property Office shall publish a patent specification. The patent specification shall contain a description, the patent claims and a summary, as well as the name of the patent holder and the inventor. When a patent is granted in English, the patent specification shall contain a translation into Norwegian of the patent claims. If the translation does not correspond to the English text, the patent protection will only apply to the extent that there is agreement between the translation and the English text. In cases concerning the limitation or validity of a patent that has been granted in English, the decision will only be based on the patent claims in English. The patent holder may submit a correction of a translation as mentioned in the third sentence. When the patent holder has paid the prescribed fee, the Norwegian Industrial Property Office shall publish notification that a corrected translation has been submitted and keep it accessible to the public. The corrected translation will then apply. When submitting a corrected translation, section 66 j second paragraph shall apply correspondingly.

A patent letter shall be issued when a patent is granted.

Granted patents are entered in the Register of Patents, which is kept by the Norwegian Industrial Property Office. Anyone is entitled to view the Register of Patents, to receive a confirmed transcript of the register and to receive copies of patent applications with enclosures that have been made available to the public in accordance with section 22..

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 Norwegian Industrial Property Office.

If a document contains trade secrets which do not relate to an invention for which patent has been sought or granted, the Norwegian Industrial Property 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 Norwegian Industrial Property Office in connection with the processing of an application shall not be available to the public, unless the Norwegian Industrial Property 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. Nor shall a sample 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 sentence 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 material 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 Norwegian Industrial Property 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.

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.

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 Norwegian Industrial Property Office within nine months from the date of grant of the patent. Under special circumstances, the Norwegian Industrial Property 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 Norwegian Industrial Property Office shall refuse an opposition which does not fulfill the conditions set forth in paragraphs 1-3.

The Norwegian Industrial Property 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.

If the patent against which an opposition has been filed has been granted in English, the Norwegian Industrial Property Office may order the patent holder to submit a translation into Norwegian of the

patent specification. If the patent holder fails to submit a translation within the time limit stipulated by the Norwegian Industrial Property Office, the Norwegian Industrial Property Office may have the patent specification translated for the patent holder's account.

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

Section 25. Subsequent to an opposition the Norwegian Industrial Property 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 Norwegian Industrial Property 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 Norwegian Industrial Property 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 Norwegian Industrial Property Office is in doubt whether a patent has been granted in conflict with section 1b, the Norwegian Industrial Property 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 Norwegian Industrial Property 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 Norwegian Industrial Property Office shall issue a new patent specification and a new letters patent and shall enter the new patent in the Register of Patents.

Section 26. If the final decision by the Norwegian Industrial Property Office with respect to an application has gone against the applicant, he may file an appeal against the decision with the Norwegian Board of Appeal for Industrial Property Rights (Board of Appeal).

If the final decision by the Norwegian Industrial Property Office 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 Appeal.

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 . 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 Appeal.

Section 27. An appeal must be received by the Norwegian Industrial Property 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 Appeal refusing a patent application, revoking a patent, or maintaining a decision by the Norwegian Property Office 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 Appeal. Section 24 seventh paragraph shall apply correspondingly to the Board of Appeal for Industrial Property Rights in connection with appeals against decisions by the Norwegian Industrial Property Office concerning an opposition.

### 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 Norwegian Industrial Property 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 Norwegian Industrial Property 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 sentence, 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 Norwegian Industrial Property 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 Norwegian Industrial Property 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.

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 Norwegian Industrial Property 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 Norwegian Industrial Property Office.

Section 22 shall also apply before the application enters the national phase when the applicant has fulfilled his duty, pursuant to section 31, to submit a translation of the application, or, if the application is in Norwegian or English, when the applicant has submitted a copy to the Norwegian Industrial Property Office.

When applying sections 48 and 56, an international patent is deemed to have been made available to the public when it has been made available in accordance with the third paragraph. An international application that is written in English and that has been made available in accordance with the third paragraph is only deemed to have been made available to the public when applying section 60 first paragraph when the applicant has submitted a translation of the patent claims into Norwegian, and the Norwegian Industrial Property Office has published a notice that such a translation has been submitted, cf. section 60 second paragraph first to third sentences.

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.

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.

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 Norwegian Industrial Property 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 Norwegian Industrial Property Office notified him of its decision. If the Norwegian Industrial Property 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 Norwegian Industrial Property Office has found that the patent application relates to independent inventions. The provisions of section 27 shall apply correspondingly to the time limit for appeal etc. and to the possibility to initiate legal proceedings against decisions of the Norwegian Board of Appeal for Industrial Property Rights..

If the Board of Appeal upholds the decision by the Norwegian Industrial Property Office, the time limit for payment of such fee as referred to in the first paragraph, second sentence, shall be computed from the date on which the Norwegian Industrial Property Office sent the applicant a notification of the decision by the Board of Appeal.

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 Norwegian Industrial



Property Office within two months from the invitation by the Norwegian Industrial Property 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 Norwegian Industrial Property 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 Norwegian Industrial Property Office a translation of the application to the extent provided by the King, and pay the prescribed application fee.

If the Norwegian Industrial Property Office finds that the decision of the receiving Office or of the International Bureau was not justified, the Norwegian Industrial Property 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 Norwegian Industrial Property 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 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 Norwegian Industrial Property Office. The request may not be filed before the nine month time limit according to section 24 paragraph 1 for filing opposition has expired and not before oppositions filed within the said period, 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. If the patent holder requests or has requested limitation or revocation of a European patent by the European Patent Office, the Norwegian Industrial Property Office shall immediately suspend its handling of a request filed in accordance with the first sentence of this section until the European Patent Office has made a final decision in the matter. The Norwegian Industrial Property Office will subsequently resume its handling of the request unless there was full accordance between this request and the request filed by the patent holder with the European Patent Office.

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

Section 39b. If the request complies with the prescribed requirements, the Norwegian Industrial Property 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 Norwegian Industrial Property 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 the patent application was filed.

Section 39c. If the patent holder has not complied with the requirements prescribed for the request, or if the Norwegian Industrial Property 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 Norwegian Industrial Property Office referred to in the first paragraph.

If the Norwegian Industrial Property 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 Norwegian Industrial Property Office finds that further correspondence is required.

Section 39d. If the final decision by the Norwegian Industrial Property Office with respect to the request 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 Appeal.

The appeal must be received by the Norwegian Industrial Property 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. The addressee of the claim is the Kingdom of Norway by the Board of Appeal.

Section 39e. If a patent is limited in accordance with the provisions of this Chapter, a notice to that effect shall be published. The Norwegian Industrial Property 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.

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.

## 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 Appeal 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.

Section 42. If the inventor is the applicant or the patent holder and the Norwegian Industrial Property Office finds that the payment of the annual fee involves considerable difficulties for him, the Norwegian Industrial Property 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 Norwegian Industrial Property 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.

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.

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.

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.

If a patent holder has been granted a compulsory licence for the exploitation of a protected plant variety according to Act No 32, March 12, 1993 about Plant variety protection Section 28 second paragraph, the holder of the plant variety right is entitled to a compulsory licences of the patented invention on reasonable terms.

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.

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.

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. Motion for preliminary enforcement has to be put forward prior to the judge's final deliberations on the merits of the case. 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 sentence shall apply correspondingly if restrictions are imposed on the compulsory licence. In a decision 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 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 fourth sentences. The decision is made by a ruling or by the final decision in the matter, cf. the second sentence. A ruling under the sixth sentence may only be opposed in connection with an appeal of the final decision in the matter.

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 Industrial Property Office, Board of Plant Varieties, or any other public agency shall, upon request from the Norwegian Competition Authority or the Board of Appeal, 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 Appeal 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 Appeal 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 Appeal's decision, the licensee is obliged to pay reasonable compensation for the economic loss the exploitation has caused. The Norwegian Competition Authority or the Board of Appeal 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 Appeal's 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.

## 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 fully or partially 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 the protection of the patent has been extended after grant of the patent; 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.

If the patent is partly invalid and it can be maintained in limited form by amending the patent claims in accordance with a request from the patent holder, the patent shall be maintained in accordance with the request filed.

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 and fifth paragraphs, 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. Proceedings must be brought within one year from the date on which when the plaintiff 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 or transferred to him, proceedings may not be brought later than three years from the grant or the transfer of the patent.

A party who, in accordance with § 24, has filed an opposition claiming that the patent has been granted to someone other than the person entitled, may, in order to try the question, bring legal proceedings within two months after the day the Norwegian Industrial Property Office's or the Norwegian Board of Appeal for Industrial Property Right's final decision in the opposition case was sent to the party concerned.

A court decision made in pursuance of the first paragraph shall take effect from the date on which the patent application was filed.

Section 52 a. If legal proceedings brought in accordance with section 52 raise the question of whether the patent has been granted in contravention of section 1 b, the Court may obtain an advisory statement from the Ethics Committee in Patent Cases, cf. section 15 a.

The Court shall decide whether such an advisory statement is to be obtained immediately after it

has received a notice of the party's intention to defend. The request for an advisory statement shall be filed in writing and the grounds for the request shall be stated. The parties shall be given an opportunity to submit observations on whether an advisory statement is to be obtained and on the wording of the request. The request shall be sent to the parties concurrently with the submission of the request to the Ethics Committee. The parties shall concurrently be granted a time limit of maximum three weeks in which to submit written observations to the Ethics Committee.

The Ethics Committee shall present its advisory statement within three months from receipt of the request. The Ethics Committee's advisory statement shall be in writing and contain the grounds on which it has been based. The advisory statement shall be presented by the full Ethics Committee unless the Chairman of the Ethics Committee finds, based on the nature of the case, that it is sufficient for three members of the Ethics Committee to handle the request. The members of the Ethics Committee shall seek to present a joint advisory statement. The advisory statement shall be sent to the Court and to the parties.

The Court shall grant the parties a time limit of three weeks in which to submit written observations on the Ethics Committee's advisory statement. The main proceedings in the case may only be held upon expiration of this time limit.

The case documents in legal proceedings in which the Ethics Committee submits an advisory statement to the courts shall not be covered by the Norwegian Freedom of Information Act. Any person shall be entitled to have access to inspect an advisory statement prepared by the Ethics Committee once a judgement has been delivered.

Section 52 b. Anyone may file a request with the Norwegian Industrial Property Office that a patent shall be declared invalid in full or in part by a decision made the Norwegian Industrial Property Office (an administrative review).

A request for an administrative review shall be filed in writing with the Norwegian Industrial Property Office and must:

- a. state the name and address of the requester;
- b. state the patent that the request concerns;
- c. state the grounds on which the request is based; and
- d. contain the necessary documentation of the matters that are being relied on in support of the request.

In addition, the request must comply with the requirements prescribed by the King by regulation, and the prescribed fee must be paid.

If the request does not comply with the requirements in the second paragraph, section 52 c or section 52 d, first paragraph, first sentence, the Norwegian Industrial Property Office shall grant a reasonable time limit in which to submit observations and, if possible, correct the deficiencies. If the deficiencies are not corrected before the expiration of the time limit, the request must be rejected unless the Norwegian Industrial Property Office finds that an extended time limit for correction hereof should be granted.

The Norwegian Industrial Property Office shall publish a notice that a request for an administrative review has been filed and present it to the patent holder, who shall be given an opportunity to submit observations on the request. The party requesting an administrative review shall give notice hereof by registered letter to all licensees who are recorded with their address in the Register of Patents. If no documentation of such notice is presented, the Norwegian Industrial Property Office may fix a time limit for such notice. If the time limit is not complied with, the request must be rejected.

If two or more requests have been filed for an administrative review of the same patent, the

Norwegian Industrial Property Office may consolidate the cases if none of the parties makes a reasoned opposition to this.

The Norwegian Industrial Property Office may consider a request for an administrative review even if the patent has terminated or terminates in accordance with section 51 or section 54 if the party requesting an administrative review has a legal interest in having this matter reviewed after the patent has terminated.

The Norwegian Industrial Property Office may take into consideration matters that have not been stated in the request for an administrative review.

Anyone may demand access to inspect the documents in administrative review proceedings. The provisions in section 22, fifth and sixth paragraphs, shall apply correspondingly.

Section 24 seventh paragraph shall apply correspondingly to the Norwegian Industrial Property Office in connection with administrative reviews.

Section 52 c. A request for an administrative review cannot be filed before the time limit for oppositions has expired or while an opposition procedure or patent limitation proceedings requested by a patent holder are pending. The same shall apply for as long as legal proceedings regarding the patent are pending before the courts. If legal proceedings regarding the patent are brought before the courts before a final decision has been made on a request for an administrative review, the Norwegian Industrial Property Office shall suspend its handling of the administrative review until the legal proceedings have been finally decided if the administrative review has been requested by other parties than the patent holder. The party requesting an administrative review cannot institute legal proceedings regarding the patent while administrative review proceedings are pending before the Norwegian Industrial Property Office.

A request for an administrative review cannot be filed by a party who has previously brought legal proceedings before the courts regarding the validity of the patent if the rules on enforceable final decisions prevent new legal proceedings regarding the patent from being brought before the courts.

Section 52 d. A request for an administrative review may only be filed on the grounds that the patent has been granted in contravention of the requirements in sections 1 and 2, but not on the grounds that the patent has been granted to another party than the party who is entitled to the invention, cf. section 1, first paragraph. If the Norwegian Industrial Property Office is in doubt about whether the patent has been granted in contravention of section 1 b, the Norwegian Industrial Property Office shall obtain an advisory statement from the Ethics Committee in Patent Cases.

If the Norwegian Industrial Property Office finds that the patent has been granted in contravention of sections 1 and 2, it shall be declared invalid if the grounds for such invalidity cannot be remedied through an amendment of the patent. The patent may only be maintained in amended form if the patent holder agrees with the amendments that the Norwegian Industrial Property Office intends to make. If the patent holder does not agree with the amendments, the patent shall be declared invalid. If there is not a basis for meeting the request in full or in part, the Norwegian Industrial Property Office shall reject the request and declare that patent will be maintained.

If the patent is maintained in amended form, the patent holder shall pay a prescribed fee for the amendment of the patent within a specified time limit. If the fee is not paid on time, the patent shall be declared invalid.

A decision to declare a patent fully or partly invalid shall take effect from the date on which the patent application was filed. The Norwegian Industrial Property Office shall publish a notice of the decision.

Section 52 e. A decision on a request for an administrative review by the Norwegian Industrial Property Office may be appealed against to the Board of Appeal by the party against whom the decision of the Norwegian Industrial Property Office has gone. The appeal must have been received



by the Norwegian Industrial Property Office within two months from the date on which notification of the decision was sent to the party in question. A prescribed fee shall be paid. In the event of any failure to pay said fee, the appeal will not be heard.

The appeal must state the following details:

- a. the appellant's name and address;
- b. the decision that the complaint concerns;
- c. the change to the decision that the appellant is claiming; and
- d. the grounds on which the appeal is based.

In addition, the appeal must comply with the requirements prescribed by the King by regulation. Section 52 b, third paragraph, shall apply correspondingly where applicable.

A decision on a request for an administrative review in which the patent is declared invalid or is amended cannot be brought before the courts later than two months after notification of the decision was sent to the party against whom the Norwegian Industrial Property Office's decision has gone. Information about the time limit for bringing an action shall be provided in the notification. The claim shall be addressed to the Kingdom of Norway by the Norwegian Industrial Property Office or by the Board of Appeal for Industrial Property Rights. A decision to refuse or reject a request for an administrative review cannot be brought before the courts.

Section 24 seventh paragraph shall apply correspondingly to the Board of Appeal for Industrial Property Rights in connection with administrative reviews.

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 fourth and fifth 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 Norwegian Industrial Property Office, the Norwegian Industrial Property 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 lapses, is invalidated, transferred, is declared terminated or is maintained in amended form, the Norwegian Industrial Property 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 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.

## Chapter 9. Provisions Concerning Legal Protection, etc.

Section 56a. Any person who has infringed a patent or aided and abetted thereto may be prohibited by judgment from repeating the action. Any person who has made significant preparations with a view to carrying out an action that would constitute an infringement, or who has in some other manner acted in a way that gives particular grounds for fearing that the person in question will commit an infringement, may be prohibited by judgment from carrying out the action.

Section 57. Anyone who intentionally infringes the exclusive right conferred by a patent (patent infringement), or who is an accessory thereto, is liable to fines or imprisonment for a term up to one year.

If especially aggravating circumstances exist, the penalty shall be fines or imprisonment for a term of up to three years. When assessing whether especially aggravating circumstances exist, particular importance shall be attached to the loss inflicted on the patent holder, including any damage to the patent holder's commercial reputation, the gain obtained by the infringer, and the extent of the infringement in other respects.

A public prosecution will only be instituted at the requests of the aggrieved person, unless this is required by the public interest.

Section 58. For patent infringements committed intentionally or through negligence, the infringer shall pay the patent holder:

- a) compensation corresponding to a reasonable licence fee for the exploitation, as well as damages for any loss resulting from the infringement that would not have arisen in connection with licensing,
- b) damages for any loss resulting from the infringement, or
- c) compensation corresponding to the gain obtained through the infringement.

The compensation and damages are determined on the basis of the provision in letters a to c that is most favourable for the patent holder.

If the infringement has been committed intentionally or through gross negligence, the infringer shall, if the patent holder so demands, pay compensation corresponding to double a reasonable licence fee for the exploitation instead of compensation and damages stipulated pursuant to the first paragraph.

The first and second paragraphs apply correspondingly to aiding and abetting.

For infringements that have taken place in good faith, the infringer shall, insofar as this is not seen

as unreasonable, pay compensation corresponding to a reasonable licence fee for the exploitation or corresponding to the gain procured as a result of the infringement.

The liability under the first to third paragraphs may be reduced pursuant to the Act of 13 June 1969 No 26 on compensatory damages Section 5-2.

Section 59. In order to prevent an infringement, the courts may, insofar as this is deemed to be reasonable, order preventive measures to be taken in relation to products that constitute an infringement of a patent, and in relation to materials and implements that are principally used, or intended to be used, for the manufacture of such products. Such measures can, among other things, entail products and materials and implements being:

- a) recalled from the channels of commerce,
- b) definitively removed from the channels of commerce,
- c) destroyed, or
- d) handed over to the patent holder.

The decision concerning whether such measures shall be imposed and the choice between possible measures shall be made on the basis of an assessment of proportionality. Among other things, account shall be taken of the gravity of the infringement, the effects of the measures and third party interests.

The first paragraph applies correspondingly in cases as mentioned in Section 56 a second sentence.

Measures imposed pursuant to this section shall not be contingent on the patent holder paying compensation to the party against whom the measure is directed, and they do not affect the patent holder's right to compensation or damages pursuant to Section 58. Measures shall be carried out for the defendant's account unless special grounds indicate otherwise.

Section 59 a shall read as follows:

Instead of stipulating measures pursuant to Sections 56 a and 59, the court may, when extraordinary grounds for doing so exist, grant permission for the exploitation of the invention during the duration of the patent, or during part of it, in return for reasonable compensation to the patent holder and on appropriate terms and conditions in other respects. Such permission may only be granted to a person who has acted in good faith.

Section 59 b shall read as follows:

In a judgment in an infringement case, the court may order that information about the judgment shall be communicated in a suitable manner for the infringer's account. This applies correspondingly to aiding and abetting and in circumstances as mentioned in Section 56 a second sentence.

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 and damages as a result of exploitation before a patent was granted may only be ordered pursuant to Section 58, first to third paragraphs.

When the patent application is in English, the applicant may submit a translation into Norwegian of

the patent claims in the application. The Norwegian Industrial Property Office shall publish a notice confirming that a translation has been submitted when the documents in the application are accessible to the public pursuant to section 22. From the publication date, the first paragraph shall apply correspondingly to applications in English. If the translation does not correspond to the English text, the patent protection will only apply to the extent that there is agreement between the texts. The patent holder may submit a correction of a translation as mentioned in the first sentence. The Norwegian Industrial Property Office shall publish a notice confirming that a corrected translation has been submitted and keep it accessible to the public once the applicant has paid the prescribed fee. The corrected translation will then apply. When submitting a corrected translation, section 66 j second paragraph shall apply correspondingly.

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 cannot 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 or on the patent having been declared invalid according to section 52 d.

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.

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 Norwegian Industrial Property 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.

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 62a second to fifth paragraph applies correspondingly.

## Chapter 10. Provisions on Legal Proceedings.

Section 63. The following actions shall be brought before Oslo District Court:

1. Actions concerning the right to an invention for which a patent has been applied for,
2. Actions concerning a review of a decision in which the Norwegian Board of Appeal for Industrial Property Rights has refused an application for a patent, has revoked a patent or confirmed a first instance decision to revoke a patent, cf. section 27 third paragraph,
3. Actions concerning requests for patent limitation, cf. Section 39 d third paragraph,
4. Actions concerning invalidation or transfer of a patent, cf. Sections 52 and 53,
5. Actions concerning compulsory licences, cf. Sections 50 and 50 a,
6. Actions concerning requests for an administrative review, cf. Section 52 e third paragraph, and
7. Civil actions concerning patent infringements.

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

Section 63 a. In actions concerning infringement or the validity of a European patent, the court may stay the proceedings until the European Patent Office has made a final decision in proceedings on revocation or limitation of the patent or until the patent may no longer be revoked by the European Patent Office.

Section 63 b. Actions concerning the right to be granted a European patent shall belong under the jurisdiction of Norwegian courts of law if:

- a. actions brought against a party who is applying for a European patent and who has his place of residence or head office in Norway;
- b. the party who is claiming the right has his place of residence or head office in Norway and the applicant does not have his place of residence or head office in a state that is a party to the European Patent Convention; or
- c. the parties have agreed in writing, or orally with written confirmation, that actions shall be brought before a Norwegian court of law.

Actions concerning the right to be granted a European patent between an employer and an employee for an invention that has been made by the employee shall belong under the jurisdiction of Norwegian courts of law if:

- a. the employee is primarily employed in Norway, or, if it cannot be ascertained in which state the person in question is primarily employed, the employee is attached to a place of business in Norway; or
- b. the parties have agreed in writing, or orally with written confirmation, that actions shall be brought before a Norwegian court of law and such an agreement is in accordance with the legislation of the state that is applicable to the employment relationship in question.

If Norwegian law applies to the contract of employment, it cannot validly be agreed that actions

mentioned in this paragraph shall be brought before a foreign court of law. Actions brought in accordance with this paragraph shall be decided on the basis of the applicable law in the state in which the employee is primarily employed, or, if this cannot be established, the applicable law in the state in which the place of business to which the employee is attached is located.

Section 63 c. Actions concerning the right to be granted a European patent must be rejected if legal proceedings between the same parties concerning the same subject-matter of the application have previously been brought before a court of law or other body in another state that is a party to the European Patent Convention. If an opposition has been filed against the hearing of the action by the court of law or the body before which the legal proceedings have been brought abroad, the court shall stay the proceedings until a final decision has been made on the matter.

Section 63 d. A final enforceable decision made in any state that is a party to the European Patent Convention in connection with legal proceedings on the right to be granted a European patent for one or several states specified in the application shall have immediate binding effect and be enforceable in Norway. No review shall be conducted of the validity of the decision or the competence of the court of law or body that has made the decision. The decision shall not have such final and binding effect if:

- a. an applicant who is applying for a European patent and who has not contested the claim substantiates that the document that formed the basis of the institution of the legal proceedings, cf. the first sentence of the paragraph, was not presented to the party in question so that said party could dispute the claim; or
- b. an applicant substantiates that a decision made in accordance with the first sentence of the paragraph is contrary to another decision made in proceedings between the same parties in a state that is a party to the European Patent Convention and that this case predates the case that resulted in the decision that is demanded accepted.

Section 63 e. If a complete translation into Norwegian of the patent application or the patent specification is not available at the Norwegian Industrial Property Office, the court may, in legal actions as mentioned in section 63 first paragraph, order a patent applicant, a patent holder or a licence holder to present such a translation. When the patent applicant, patent holder or licence holder is the plaintiff, the legal action may be dismissed if an order to present such a translation is not complied with. If the patent applicant, patent holder or licence holder is the defendant, the court may decide that a translation shall be obtained for the defendant's account if an order to present such a translation is not complied with.

This section applies correspondingly to legal actions concerning supplementary protection certificates as mentioned in sections 62 a and 62 b.

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 Norwegian Industrial Property 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. For a European patent to be valid in this country, the patent holder must, no later than three months after the date on which the European Patent Office published its decision to grant a patent, submit to the Norwegian Industrial Property Office a translation as stipulated in the second

paragraph of the text on which the decision is based, and pay the prescribed fee. The same shall apply when the European Patent Office decides that a European patent shall be maintained in amended form following an opposition procedure or appeal proceedings or through a centralised patent limitation. The provisions in section 72 first paragraph shall apply correspondingly when time limits pursuant to this paragraph are exceeded. If it is decided that a failure to meet a time limit shall not result in the loss of rights, the Norwegian Industrial Property Office shall publish a notice hereof.

When submitting a translation in accordance with the first paragraph first or second sentence, a translation of the patent claims into Norwegian must always be submitted. If a patent has been granted in French or German, a translation into Norwegian or English of the description shall also be submitted. When the patent application is granted in English, the applicant may submit a Norwegian translation of the description.

Translations shall be kept accessible to the public. This does not apply, however, until a European patent application has been published by the European Patent Office.

When the European Patent Office has published its decision to grant a patent and the requirements in the first paragraph have been complied with, the Norwegian Industrial Property Office shall publish a notice that the patent is valid in this country. The same shall apply if a European patent is to be maintained in amended form in accordance with a decision made by the European Patent Office.

In the cases referred to in section 63 the court shall send copies of its judgements to the Norwegian Industrial Property Office.

## Chapter 10 a. European Patents

Section 66 a. A European patent is a patent that has been granted by the European Patent Office in accordance with the Convention on the Grant of European Patents of 5 October 1973 (the European Patent Convention). A European patent application is an application for such a patent.

A European patent application may be filed with the European Patent Office or with the Norwegian Industrial Property Office, which will forward it to the European Patent Office within a specified time limit. An European divisional application shall, however, be filed directly with the European Patent Office in accordance with Article 76 of the European Patent Convention.

Section 66 b. A European patent has been granted when the European Patent Office has published its decision on this. If it has been specified that the patent shall be valid in Norway, the patent shall have the same effect as patents that have been granted by the Norwegian Industrial Property Office and shall follow the same provisions when the requirements in section 66 c, first paragraph, have been complied with.

A decision from the European Patent Office fully or partially to revoke or limit a European patent shall have the same effect in Norway as corresponding decisions made by the Norwegian Industrial Property Office. The decision shall take effect already from the date on which the patent application was filed. The provisions in sections 39 e and 55 shall apply correspondingly. In order for a patent granted in accordance with a decision by the European Patent Office to have effect in Norway in amended form, the requirements in section 66 c, first paragraph, must also have been complied with.

Section 66 c. In order for a European patent to have effect in Norway, the patent holder shall, within the time limit prescribed by the King, send to the Norwegian Industrial Property Office a Norwegian translation of the text that forms the basis of the decision to grant the patent and pay the prescribed fee. The same shall apply if the European Patent Office decides that a European patent shall be maintained in amended form after an opposition procedure or appeal proceedings or

through a centralised patent limitation. The provisions in section 72, first paragraph, shall apply correspondingly to any failure to meet time limits in accordance with the present paragraph. If a decision is made on the re-establishment of rights despite the failure to meet a time limit, the Norwegian Industrial Property Office shall publish a notice hereof.

Translations shall be kept accessible to the public. However, this shall not apply until a European patent application has been published by the European Patent Office.

When the European Patent Office has published its decision to grant the patent and the requirements in paragraph 1 have been complied with, the Norwegian Industrial Property Office shall publish a notice that the patent is valid in Norway. The same shall apply if a European patent is to be maintained in amended form in accordance with a decision made by the European Patent Office.

Section 66 d. If any party has, in good faith, started exploiting the invention for commercial or operational purposes in Norway or has made significant improvements to the invention after the time limits stipulated in section 66 c have expired, but before notice has been published that the failure to meet the time limits will not have any effect, the party in question may, without being prevented by the patent, continue the exploitation of the invention in same manner. The provision in section 74, third paragraph, shall apply correspondingly.

Section 66 e. An annual fee for European patents shall be payable to the Norwegian Industrial Property Office for each year from the year after the European Patent Office published its decision to grant the patent. The provisions in sections 42 and 51 shall apply correspondingly.

Section 66 f. A European patent application that is valid in Norway and for which the European Patent Office has accorded a filing date shall have the same effect as an application filed in Norway on the same date. If, in accordance with the European Patent Convention, the application has priority from an earlier date than the filing date, this priority date shall also apply in Norway.

In connection with the application of section 2, second paragraph, second sentence, publication in accordance with Article 93 of the European Patent Convention shall be equated with the application being made available to the public in accordance with section 22. This shall also apply to publication in accordance with Article 153 (3) and (4), when such publication is equated with publication in accordance with Article 93.

Section 66 g. When a European patent application has been published in accordance with the European Patent Convention and the applicant has supplied the Norwegian Industrial Property Office with a translation into Norwegian of the patent claims in their published form, the Norwegian Industrial Property Office shall publish a notice hereof and make the translation available to the public.

If anyone commercially or operationally exploits an invention that is the subject-matter of a European patent application and that has been published in accordance with the first paragraph, the provisions on patent infringements contained in this Act shall apply, except from sections 57 and 58, first paragraph, if the application results in a patent being granted in Norway. The protection conferred by the patent shall, however, only extend to what is specified in the published patent claims and in the patent claims in the granted patent. If the patent has been revoked or limited by the European Patent Office, the protection conferred by the patent shall only extend to what is specified in the published amended patent claims.

The limitation period for claims in accordance with these provisions shall not begin to run until the limitation period for the European patent has expired or the European Patent Office has decided to maintain the patent after the conclusion of the opposition procedure.

Section 66 h. If a European patent application is rejected, this shall have the same effect as if a patent application filed in Norway had been rejected by the Norwegian Industrial Property Office.

If a European patent application is withdrawn or if a statement that the application is to comprise



Norway is withdrawn, or if the application or the statement must be regarded as having been withdrawn in accordance with the European Patent Convention and the application is not resumed in accordance with Article 121 of the European Patent Convention, this shall have the same effect as if a patent application filed in Norway is withdrawn or is regarded as having been withdrawn from the Norwegian Industrial Property Office.

Section 66 i. If the translation in accordance with section 66 c or section 66 g is not in conformity with the text in the language that was the language of the proceedings at the European Patent Office, the protection conferred by the patent shall only apply in Norway to the extent to which there is conformity between the translation and the text in the language of the proceedings. In proceedings concerning the validity of the patent in Norway, only the text in the language of the proceedings shall form the basis of the decision.

Section 66 j. If the applicant or the patent holder supplies a correction of the translation in accordance with section 66 c to the Norwegian Industrial Property Office and pays the prescribed fee, the corrected translation shall apply. Section 66 c third paragraph shall apply correspondingly. The provisions in section 66 c, second paragraph, shall apply correspondingly. The Norwegian Industrial Property Office shall publish a notice that a corrected translation has been supplied. If the applicant supplies a correction of the translation in accordance with section 66 g, the Norwegian Industrial Property Office shall publish a notice that a new translation has been supplied and make it available to the public. The corrected translation shall subsequently apply.

If anyone has commenced, in good faith, to exploit the invention for commercial or operational purposes in Norway in a manner that did not constitute an infringement of the applicant's or the patent holder's right in accordance with a previous translation, or if anyone has made significant improvements to the invention, at the time at which a corrected translation entered into force, the party in question may freely continue a corresponding exploitation of the invention without this being prevented by the applicant's or the patent holder's right. The provisions in section 74, third paragraph, shall apply correspondingly.

Section 66 k. If the European Patent Office decides that a failure to meet the time limit for a European patent application or a European patent will not have any effect, this decision shall also apply in Norway.

If anyone has commenced, in good faith, to exploit the invention for commercial or operational purposes in Norway, or has made significant improvements to the invention, after the failure to meet the time limit, but before the European Patent Office has published its decision that the failure to meet the time limit will not have any effect, the party in question may freely continue a corresponding exploitation of the invention without this being prevented by the patent. The provisions in section 74, third paragraph, shall apply correspondingly.

Section 66 l. If, in the period between the date on which a decision was made by the Board of Appeal of the European Patent Office and the date of publication of a decision made by the Enlarged Board of Appeal of the European Patent Office, anyone has commenced, in good faith, to exploit an invention for commercial or operational purposes in Norway, or has made significant improvements to the invention, regarding an invention that is the subject-matter of a published European patent application or a published European patent, the party in question may freely continue a corresponding exploitation of the invention without this being prevented by the patent applicant's or the patent holder's right. The provisions in section 74, third paragraph, shall apply correspondingly.

Section 66 m. If a European patent application that has been filed with a national patent office is regarded as having been withdrawn because the application has not been forwarded to the European Patent Office within the stipulated time limit, the Norwegian Industrial Property Office shall, on request from the applicant, regard the application as an application for a patent in Norway if:

a. the request has been filed with the national authority that received the application within three months from when the applicant was informed that the application was regarded as having been withdrawn; and

b. the request has been forwarded to the Norwegian Industrial Property Office within 20 months from the filing date of the application or, if priority has been claimed, from the priority date.

If the requirements in the first paragraph have been complied with, the Norwegian Industrial Property Office shall process the application if, within a time limit prescribed by the King, the applicant pays the prescribed fee and submits a translation of the application into Norwegian or English, or a copy of the application if it is in English. If the application complies with the formal requirements in the European Patent Convention, the corresponding requirements in this Act shall be regarded as having been complied with.

## Chapter 11. Miscellaneous Provisions

Section 67. Notifications from the Norwegian Industrial Property Office or from the Norwegian Board of Appeal for Industrial Property Rights to an applicant, patent holder, opposing party or a party requiring an administrative review are always considered as submitted when sent to the address specified most recently to the Norwegian Industrial Property Office or the Norwegian Board of Appeal for Industrial Property Rights by the party concerned. The address shall be recorded in the Register of Patents. Paragraph 1 applies correspondingly to notices from the Norwegian Competition Authority to the patent holder in cases according to section 50a.

If the recorded address proves to be incorrect, the notification or an extract thereof, shall be published in the Norwegian Patent Journal (Norsk Patenttidende) with an indication that the document may be obtained at the Norwegian Industrial Property Office or the Norwegian Board of Appeal for Industrial Property Rights.

May service of process or other procedural notifications not be submitted at the stated address, paragraph 2 applies correspondingly to the Court. In such case, the document shall be considered served or notification given four weeks after the publication in the Norwegian Patent Journal (Norsk Patenttidende).

If the applicant or the patent holder has appointed a representative to act on his behalf in matters concerning the application or the patent, the name and the address of the representative shall be recorded in the Register of Patents. This also applies if an opposing party or a party requesting an administrative review has appointed a representative to act on his behalf in matters concerning the opposition or the request of review.

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 printouts, copies and certificates issued by the Norwegian Industrial Property Office. The fees for printouts and copies shall be set to a level where the total income does not exceed the actual costs of communicating the information, with a reasonable profit added.

Section 69. The King may issue regulations setting out more detailed 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 Norwegian Industrial Property Office, language requirements for applications and other documents submitted to the Norwegian Industrial Property Office and the Board of Appeal for Industrial Property Rights, the case processing language for the Norwegian Industrial Property Office and the Board of Appeal for Industrial Property Rights, and the implementation of this Act in other respects. The journals of the Norwegian Industrial Property Office concerning filed patent applications shall be available to the public to the extent provided by the King.

The King may provide that the Norwegian Industrial Property 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 Norwegian Industrial Property Office.

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 Norwegian Industrial Property 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, section 27 third paragraph, section 39 d third paragraph, section 52 fourth and fifth paragraph, section 52 e third paragraph and section 53 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 vis-à-vis the Norwegian Industrial Property 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 Norwegian Industrial Property 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:

1. 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 Norwegian Industrial Property Office within five days from the resumption of the postal service; or

2. the document or fee was sent by registered mail to the Norwegian Industrial Property 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 Norwegian Industrial Property 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 Norwegian Industrial Property 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.

Section 75. The Head of the Norwegian Industrial Property Office shall designate the person who will make decisions on requests according to sections 72 and 73. The applicant or the patent holder may appeal against refusal of such requests to the Board of Appeal. Section 27 shall apply correspondingly concerning the time limit for appeal etc., and for the opportunity to bring decisions of the Board of Appeal before the courts of law.

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. Taking into account the following exceptions, this law also applies to patents which is made available to the public or are made available to the public according to the legislation in force up to now.

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Section 77. Amendments of other Acts - - -.