

# Law on Inventive Activity\*

(of October 19, 1972, as amended by the Law of April 16, 1993)

## TABLE OF CONTENTS\*\*

		<i>Article</i>
Part I:	General Provisions .....	1 – 9
Part II:	Inventions and Patents	
	1. Patents .....	10 – 19
	2. Right to Obtain a Patent .....	20 – 25
	3. Filing of Patent Applications with the Patent Office .....	26 – 32
	4. Examination of the Application .....	33 – 41
	5. Rights and Obligations Arising from a Patent.....	42 – 58
	6. Secret Inventions.....	59 – 67
	7. Annulment and Lapse of Patent.....	68 – 74
	8. Exercise of Rights Abroad .....	75 – 76
Part III:	Utility Models and Rights to Protection .....	77 – 82
Part IV:	Rationalization Projects.....	83 – 91
Part V:	[Deleted]	
Part VI:	Remuneration for Invention Projects.....	98 – 112
Part VII:	Proceedings, Registers, Fees.....	113 – 120
Part VIII:	Penal Provisions.....	121 – 123
Part IX:	Transitional Provisions and Final Clauses .....	124 – 128

## Part I General Provisions

### Art. 1.

(1) This Law regulates the legal relationship in the field of inventions, utility models and rationalization projects.

(2) In this Law, the term “inventive projects” includes inventions, utility models and rationalization projects.

### Art. 2. [Deleted]

### Art. 3.

The provisions of this Law shall not prejudice the provisions of international agreements.

### Art. 4.

Foreign natural and legal persons shall enjoy the rights relating to inventive matters on the basis of the international agreements to which the Republic of Poland is party or on the principle of reciprocity.

### Art. 5. [Deleted]

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*Note:* Translation by the International Bureau of WIPO on the basis of an English translation supplied by the Polish authorities.

\*\* Added by WIPO

Art. 6. [Deleted]

Art. 7. [Deleted]

Art. 8.

(1) Under the conditions set out in this Law, the creator of an inventive project shall be entitled to obtain a patent, a right of protection, as well as a right to remuneration.

(2) The creator of an inventive project shall be entitled to be mentioned as such in descriptions, registers and other documents and publications.

(3) A person who has merely assisted in making an inventive project shall not be considered a joint inventor.

(4) In this Law, “the creator of an inventive project” also includes joint inventors.

Art. 9.

(1) Social organizations whose activities include the encouragement of inventive activity, and also autonomous organs operating within economic entities, shall provide assistance to the creators of inventive projects in accordance with their statutes and regulations and with the provisions of this Law.

(2) The organizations referred to in paragraph (1) shall represent the interests of the creators of inventive projects before the economic entities, government bodies and local government agencies in matters relating to inventive projects.

(3) Subject to Article 32(7), representatives of the organizations referred to in paragraph (1) may act as attorneys for the creators of inventive projects in matters relating to inventive activity before the courts and in proceedings before the Patent Office of the Republic of Poland, hereinafter referred to as the “Patent Office,” and before the Board of Appeals of the Patent Office.

## Part II Inventions and Patents

### 1. Patents

Art. 10.

Any new solution of a technical character which does not obviously result from the prior art and which is capable of practical application shall be a patentable invention.

Art. 11.

A solution shall be considered new if, before the date determining the priority for obtaining a patent, it has not been made available to the public—in particular, by publication, public implementation or display at a public exhibition—in such a way as to give an expert sufficient data for its application.

Art. 12.

Patents shall not be granted for:

1. new plant varieties and animal breeds as well as biological processes for the cultivation of plants or breeding of animals;

2. methods for the treatment of diseases in the fields of medicine and veterinary science and in plant protection;

3. inventions whose exploitation would be contrary to law or public policy; this shall not apply where only the sale of a patented product or of a product obtained by means of a patented process is limited by law;

4. computer programs;

5. products obtained by nuclear transformation;

6. scientific theories and discoveries.

Art. 13. [Deleted]

Art. 14. [Deleted]

Art. 15.

(1) The competent authority for the grant of patents and the issue of letters patent shall be the Patent Office.

(2) Grants of patents shall be entered in the Register of Patents.

Art. 16.

(1) A patent shall confer the exclusive right to exploit the invention, for profit or for professional purposes, throughout the territory of the State.

(2) The term of a patent shall be 20 years, starting from the date on which the application was filed with the Patent Office.

(3) The scope of protection shall be determined by the claims contained in the patent specification.

(4) A patent granted for a process of manufacture shall also cover products directly obtained by means of that process.

(5) The exploitation of an invention concerning means of transport, or their parts or accessories, temporarily located on the territory of the State, or concerning articles which are in transit through the territory of the State, shall not be considered an infringement of a patent.

(6) The exploitation of an invention for national purposes, to the necessary extent and without detriment to the justified economic interests of the patentee, where it has been found indispensable to prevent or eliminate a state of emergency relating to security or public order, shall not be considered an infringement of a patent.

(7) The fortuitous preparation of a medicine in a pharmacy on a physician's prescription shall not be considered an infringement of a patent relating to pharmaceuticals.

(8) The use of an invention for scientific purposes shall not be considered an infringement of a patent.

Art. 17.

(1) A patentee may obtain a patent of addition for improvements or additions to the invention where such improvements or additions have the characteristics of an invention but cannot be applied separately. A patent of addition may also be obtained for a patent of addition already granted.

(2) A patent of addition shall lapse together with the principal patent. However, where the principal patent lapses for a reason not affecting the invention covered by the patent of addition, the first patent of addition shall become independent and remain in force for the period for which the principal patent was granted.

(3) [Deleted]

Art. 18.

(1) An invention whose exploitation would encroach upon the exploitation of an invention for which a patent having priority (earlier patent) is already in existence may be the subject of a dependent patent.

(2) The dependent patent shall become independent in the event of lapsing of the earlier patent.

(3) Paragraphs (1) and (2) shall apply, *mutatis mutandis*, to a patent for an invention whose exploitation would encroach upon the right of protection of a utility model having priority.

Art. 19.

Any person having a legitimate interest therein may request the Patent Office to ascertain that a specified production is not covered by a particular patent.

## 2. Right to Obtain a Patent

Art. 20.

(1) The right to obtain a patent for an invention (the right to a patent) shall belong to the inventor. Where an invention has been made by more than one person, the right to a patent shall belong to them jointly.

(2) Where an invention has been made by a creator in the course of his employment duties or in the execution of a commission, the right to a patent shall belong to the employer or the commissioner, unless otherwise agreed by the parties concerned.

(3) Where an invention has been made by a creator with the assistance of an economic entity, the latter shall enjoy the right to exploit the invention in its own field of activity. In the agreement on the provision of assistance, the parties may stipulate that the right to obtain a patent for such invention shall belong in whole or in part to the economic entity.

(4) Agreements concluded between economic entities may designate the entity to which the right to a patent shall belong where an invention is made in connection with the implementation of such agreement.

Art. 21. [Deleted]

Art. 22. [Deleted]

Art. 23.

Subject to the exceptions provided for in Articles 24 and 25, priority for the grant of a patent shall be determined according to the date on which the application was filed with the Patent Office.

Art. 24.

(1) Priority for obtaining a patent shall be determined according to the date on which the invention was displayed at a public exhibition within the territory of Poland or abroad, provided that the application is filed with the Patent Office within six months of that date.

(2) The President of the Patent Office shall, by an order issued at the request of the Minister responsible or with his consent, specify the public exhibitions and determine conditions for the display of the invention that must be fulfilled to enable the invention to enjoy the priority referred to in paragraph (1).

Art. 25.

Foreign natural and legal persons nationals of member countries of the International Union for the Protection of Industrial Property, as well as nationals of other countries, provided that they have their domicile or seat or a real and effective industrial or commercial establishment in one of the member countries of that Union, shall, in accordance with the principles laid down in the international agreements, enjoy priority for the purpose of obtaining a patent in the Republic of Poland based on the date of the first regular application for protection in one of those countries, provided that the application is filed with the Patent Office within 12 months of such date.

## 3. Filing of Patent Applications with the Patent Office

Art. 26.

(1) Applications for patents shall take the form of a petition filed with the Patent Office together with a description of the invention disclosing its nature, claims, an abstract of the description and, where necessary, drawings.

(2) and (3) [Deleted]

(4) An application for a patent shall be deemed to have been filed at the time it is submitted to the Patent Office or posted at a Polish post office for dispatch to the Patent Office.

(5) Where an invention which was filed together with another invention has, at the invitation of the Patent Office, subsequently been filed in a separate application within the time fixed by the Office, such

application shall be deemed to have been filed on the date of the first filing, provided that the basic nature of the invention has not been altered.

Art. 27.

(1) Where the applicant is not the inventor, he must name the inventor in his petition and state the grounds for his right to a patent.

(2) The President of the Patent Office shall specify the special requirements to be fulfilled by patent applications.

Art. 28.

The applicant shall state in his petition whether he wishes to exercise the right of priority deriving from the display of the invention at a public exhibition or from an application filed abroad.

Art. 29.

(1) During the examination of a patent application, the Patent Office may issue orders inviting the applicant to complete the application within a given time limit or to remedy any specified omissions or major defects. Those orders shall be subject to appeal. Where appeal is rejected, the time limit shall start to run again.

(2) Where the orders referred to in paragraph (1) are not complied with in good time, the application shall be deemed withdrawn and the proceedings shall be discontinued.

(3) Where failure to comply with the time limit by the applicant occurs during the examination of the application, the Patent Office shall restore the time limit at the applicant's request if the latter is able to prove that, in all probability, failure to comply was without fault on his part.

(4) The request referred to in paragraph (3) shall be addressed to the Patent Office within two months of the date on which the cause of the failure to comply with the time limit ceased to exist, but not later than one year from the date on which the time limit expired. At the same time as filing his request, the applicant shall perform the act in respect of which the time limit was fixed.

(5) The time limit for submitting the request referred to in paragraph (4) may not be restored.

(6) Where it is decided to discontinue the proceedings on the grounds referred to in paragraph (2), failure to comply with the time limit may be disregarded if the applicant, in his appeal, is able to prove that, in all probability, failure to comply was without fault on his part, whilst at the same time performing the act in respect of which the time limit was fixed.

Art. 30.

Up to the time a decision is taken on the grant of a patent, the applicant may make amendments and corrections to his application, provided that such amendments and corrections neither alter the basic nature of the invention nor justify a change in the priority for obtaining the patent.

Art. 31.

In his petition or during the examination of the patent application, or within two months from the date on which a decision to refuse a patent takes effect, the applicant may apply for utility model protection. The utility model application shall be deemed to have been filed on the filing date of the original application.

Art. 32.

(1) The applicant filing the invention shall be a party to the proceedings before the Patent Office for the grant of a patent.

(2) to (6) *[Deleted]*

(7) In the proceedings before the Patent Office in matters relating to the filing and examination of applications and the maintenance of patent protection, a patent agent only may act as representative. Foreign persons may only act when represented by a patent agent who is a permanent resident in Poland.

## 4. Examination of the Application

### Art. 33.

During the procedure preceding the publication of the application for an invention referred to in Article 34(1), the files relating to the application may not, without the applicant's consent, be disclosed or made available to unauthorized persons. Where, in the petition mentioned in Article 26(1), the applicant gives his consent, the Patent Office may make available to third persons information on the filing of the application, disclosing the number, filing date, title of the application and the applicant's name. During the examination of the patent application, the Patent Office may seek necessary opinions. Anyone taking part in the preparation and the issue of such opinions shall be required not to disclose data concerning the application.

### Art. 34.

(1) The Patent Office shall publish the patent application immediately after 18 months have elapsed from the date of filing the application for an invention or from the date of priority to obtain a patent, whichever time limit expires earlier. However, the applicant may, either in the petition or within 12 months from the priority date, request publication at an earlier date.

(2) [Deleted]

(3) As from the date of publication, referred to in paragraph (1), other persons may inspect the description of the invention, patent claims and drawings. Such persons may, within six months from the day of publication, submit to the Patent Office any remarks as to the existence of obstacles to the grant of a patent.

(4) [Deleted]

### Art. 35.

Once the application is published, the invention shall enjoy provisional protection as from the day the application was filed with the Patent Office unless the application has been withdrawn or the Patent Office has refused to grant a patent.

Art. 36. [Deleted]

### Art. 37.

(1) If the Patent Office ascertains that the statutory conditions required for granting a patent are satisfied, it shall take a decision on such grant. A decision on refusal to grant a patent may also be taken by the Patent Office before publication of the application.

(2) The Patent Office shall grant a patent if the applicant has paid the fee for the first period of protection. Where the fee is not paid within the prescribed time limit, the Patent Office shall reverse the decision to grant a patent.

### Art. 38.

(1) The grant of a patent shall be evidenced by the issue of letters patent.

(2) [Deleted]

(3) The description of the invention together with the claims and drawings (patent specification) shall constitute an integral part of the letters patent. The specification shall be published.

(4) The applicant shall bear the cost of publishing the specification.

(5) The President of the Patent Office shall specify special guidelines for the examination of a patent application as well as the manner of and time limits for payment of the fee for the publication of the specification.

### Art. 39.

(1) Any rectification of the specification may only relate to misprints and other obvious mistakes.

(2) The Patent Office shall decide on the rectification, determining at the same time whether and to what extent a new publication of the patent specification is to be made and whether and to what extent the patentee should bear the cost of republishing the specification. This decision may be appealed.

Art. 40.

(1) Where after the grant of a patent for an invention, an application having priority is filed for the same invention, the patentee shall be required to make a statement on the validity of the new application within the time limit laid down by the Patent Office.

(2) Where the patentee contests the validity of the new patent application, the matter shall be settled in a litigation procedure.

(3) Where the patentee fails to make a statement on the validity of the new patent application, the decision to grant the patent to him shall be revoked.

Art. 41.

The official gazette (*Wiadomości Urzedu Patentowego*) of the Patent Office shall publish notices concerning the grant of a patent and, where the application has been published, notices concerning the withdrawal of an application, the refusal of a patent, the revocation of a decision to grant a patent and the rectification of a specification.

## 5. Rights and Obligations Arising from a Patent

Art. 42.

(1) The patentee or the licensee may not abuse his rights, in particular by employing prohibited monopolistic practices.

(2) The Patent Office may request from the patentee or licensee explanations as to the extent of working of the invention in order to determine how the exclusive right is used.

Art. 43.

(1) Any person, who, at the date determining the priority for the grant of a patent, has exploited the invention on the territory of the State in good faith, may continue to exploit it in his enterprise free of payment to the extent to which he had previously exploited the invention. This right shall also vest in a person who at the same date had already made substantial preparations for the exploitation of the invention.

(2) The right referred to in paragraph (1) shall, at the request of the person concerned, be recorded in the Register of Patents. The right may be transferred to another person, but only together with the enterprise.

Art. 44.

(1) The right to a patent and a patent may be assigned or be subject to succession.

(2) The transfer contract shall be in writing on pain of invalidity.

(3) The transfer of a patent shall be binding on third parties as from the date of its entry in the Register of Patents.

(4) [Deleted]

Art. 45.

(1) A joint owner of a patent may, without the consent of the other joint owners, exploit the invention himself and assert his claims in the event of infringement of the patent.

(2) Where he makes a profit from the exploitation of the invention, a joint owner of the invention shall be required to transfer to each of the other joint owners a part, proportional to their participation, of one half of the profits obtained after deduction of the relevant expenditure.

(3) In cases not covered by paragraphs (1) and (2), the appropriate provisions of the Code of Civil Law pertaining to joint ownership in fractional parts shall apply accordingly.

(4) The contract on joint ownership of the patent may specify other rights and obligations of the joint owners of the patent.

(5) The provisions of paragraphs (1) to (4) shall apply, *mutatis mutandis*, to the joint right to the patent.

Art. 46.

(1) A patentee may authorize (license) by contract another person to exploit his invention (license contract).

(2) The license contract shall be in writing on pain of invalidity.

(3) The license shall, at the request of the parties, be recorded in the Register of Patents. The holder of an exclusive license entered in the Register of Patents may, to the same extent as the patentee, assert his claims in the event of infringement, unless the license contract provides otherwise.

(4) Unless otherwise agreed in the license contract, the grant of a license shall not preclude the grant of a further license to exploit the invention and not prevent the patentee from exploiting the invention at the same time (non-exclusive license).

(5) Unless otherwise agreed in the license contract, the licensee shall have the right to exploit the invention to the same extent as the licensor (full license).

(6) The licensee authorized to exploit the invention may grant a sublicense only with the consent of the owner of the patent; granting further sublicenses shall be unlawful.

(7) Unless otherwise agreed in the license contract, the licensor shall be required to transfer to the licensee all the technical know-how necessary to exploit the invention that is available to him at the time of concluding the contract.

(8) Where a licensed patent is transferred, the license contract shall be effective in relation to the successor in title.

Art. 47. [Deleted]

Art. 48.

Unless otherwise agreed between the parties, the provisions on license contracts shall apply, *mutatis mutandis*, to contracts for the exploitation of an invention filed with the Patent Office and for which no patent has as yet been granted, and to contracts offering a non-protected invention that is secret.

Art. 49.

(1) The Patent Office may, in litigation proceedings, grant authorization (a compulsory license) to exploit an invention that is the subject matter of a patent of another person, where:

1. it is necessary to prevent or eliminate a state of national emergency,
2. it has been found that the exclusive right has been abused within the meaning of Article 42, in particular where:

- (a) the patentee, without justified reason, does not offer or prevent the offering of the products manufactured by means of the invention on terms meeting the social demand, or
- (b) the patentee, by refusing to conclude a license contract, prevents the meeting of the social demand through the exploitation of the invention that is the subject matter of a dependent patent; in such case, the holder of the original patent may demand that an authorization be given to him for the exploitation of the invention that is the subject matter of the dependent patent (cross-license).

(2) In the case referred to in paragraph (1)1(a), the Patent Office shall decide that an application may be made for a compulsory license and shall publish the decision in *Wiadomosci Urzedu Patentowego*. Such license, based on an insufficient supplying of the market with the products manufactured by means of the invention, may be granted not earlier than three years from the date of granting the patent.

(3) The person exploiting the invention under a compulsory license shall be required to pay a royalty to the patentee of an amount corresponding to the market value of the license.

(4) The decision regarding the grant of a compulsory license shall specify, in particular, the scope and duration of the license, the detailed conditions for its exercise, the amount of the royalty and the manner and time limits of payment.

(5) Article 46(5) and (6) shall apply to compulsory licenses.

(6) A compulsory license may only be transferred by the licensee together with the enterprise in which it is worked.



(7) A compulsory license may not give the licensee an exclusive right to exploit the invention.

Art. 50.

In the cases referred to in Article 49(1), a compulsory license may also be granted for the rights deriving from license contracts (compulsory sublicense). Article 49(6) shall apply *mutatis mutandis*.

Art. 51.

The provisions in a decision to grant a compulsory license or sublicense which relate to the terms of the license or sublicense or to the amount of the royalty under the license (sublicense) may be amended after two years, at the request of the interested party or *ex officio*, if this should prove necessary for reasons of equity owing to substantial changes in circumstances.

Art. 52.

(1) A patentee may file with the Patent Office a declaration of his willingness to grant a license for exploitation of the invention without payment or against appropriate payment (open license). That declaration may not be revoked.

(2) The declaration of the patentee shall be entered in the Register of Patents and published in *Wiadomości Urzedu Patentowego*.

(3) On filing a declaration of willingness to grant a license, the patentee shall pay one half of the renewal fees due for patent protection.

(4) An open license shall be a non-exclusive, full license and the royalties may not exceed 10 percent of the profits obtained by the licensee in each year of exploiting the invention.

(5) A license shall be concluded at the time the parties reach agreement on the substantial provisions of the contract or at the time the licensee starts exploiting the invention and notifies the licensor thereof within the time limit laid down in paragraph (6).

(6) A licensee who starts the exploitation of the invention without initiating or before concluding negotiations shall be required to inform the licensor thereof in writing within one month of the date of starting to exploit the invention. The licensee shall pay the maximum payment laid down in paragraph (4), unless the licensor's offer contains lower payments. Payment shall be made within one month of the end of each calendar year in which the licensee has exploited the invention, unless otherwise agreed between the parties.

(7) The license contract may be terminated by the licensee at the end of the calendar year during which its three-year term of validity is completed, subject to 12 months' notice; any provisions in the contract that are less favorable to the licensee shall be null and void.

(8) The provisions of paragraphs (1) to (7) shall apply, *mutatis mutandis*, from the date of publication of the patent application by the Patent Office.

Art. 53.

(1) Where the person carrying out a contract for research and development work transfers the results of such work containing an invention to the person commissioning the work, he shall be deemed to have granted a license for exploiting the invention to the commissioning person (implied license).

(2) Unless otherwise agreed between the parties, in the case referred to in paragraph (1) the person carrying out the work has the right to additional remuneration amounting to five percent of the profits derived from the exploitation of the invention during the first five years of exploitation.

Art. 54. [Deleted]

Art. 55.

Where an application for a patent has been filed or a patent has been obtained by a person not entitled thereto, the entitled person may require that the application be refused or the patent be declared invalid. He may also require that the patent be granted in his favor and that the patent already granted be transferred to him, against reimbursement of the costs of the application or of obtaining the patent.

Art. 56.

The person who, not being entitled to do so, filed the application or obtained the patent shall, in accordance with the general principles of law, surrender the profits obtained to the entitled person and redress the damage. At the request of the entitled person, he shall also be required to publish an appropriate statement in the press and, if he had acted intentionally, to pay an adequate amount of money to one of the organizations mentioned in Article 9(1), for the purpose of encouraging inventive activity.

Art. 57.

(1) A person whose patent has been infringed may, in accordance with the general principles of law, demand the cessation of the infringement, the redress of its consequences and the surrender of any profits obtained or the compensation of damages.

(2) At the request of the entitled person, the person infringing the patent shall also be required to publish an appropriate statement in the press and, if he had acted intentionally, to pay an adequate amount of money to one of the organizations mentioned in Article 9(1), for the purpose of encouraging inventive activity.

(3) In the case of a patent for a process for the manufacture of a new product, any product that can be obtained by means of the patented process shall be presumed to have in fact been produced by that process.

(4) At the request of the entitled person, the court may also, in its decision on the question of infringement of a patent, decide as to the disposal of products manufactured unlawfully and any means used in their manufacture.

(5) [Deleted]

Art. 58.

Claims in relation to a patent infringement shall become statute-barred after three years. The period of limitation shall run, separately for each infringement, from the date when the person entitled to claim has learned about the infringement of a patent. The period of limitation shall be suspended for the time between the filing of the application with the Patent Office and the grant of the patent.

## 6. Secret Inventions

Art. 59.

(1) An invention made by a Polish national shall be deemed to be a secret invention if it concerns national defense or the security of the State.

(2) The sphere of national defense shall include inventions concerning, in particular, new categories of weapons, military equipment, methods of combat or other strictly military matters.

(3) The Minister for National Defense may specify in detail the kinds of inventions which fall within the sphere of national defense.

(4) A secret invention shall constitute a State secret.

(5) Secrecy of an invention in the field of national defense or the security of the State shall be determined by the Minister for National Defense or the Minister for the Interior, each where he is concerned.

Art. 60.

(1) Work concerning a secret invention, the filing of the relevant patent application and the examination procedure may only be carried out with due regard to secrecy.

(2) The obligation of keeping the invention secret lies with the inventor and the persons working on the invention, as well as with the manager of the economic entity in which the work on the secret invention is or has been carried out.

Art. 61.

When filing a secret invention with the Patent Office, the applicant shall be required to notify immediately this invention to the Ministry of National Defense or the Ministry of the Interior.

Art. 62.

(1) The Patent Office shall send to the Ministry of National Defense lists of the applications for inventions filed with the Office and also, at the request of the Ministry, the descriptions and drawings of inventions filed with the Office which fall within the sphere of national defense.

(2) Files on the application for a secret invention together with the description and drawings, may be made available for inspection to organs duly authorized by the Minister for National Defense or the Minister for the Interior.

Art. 63.

(1) A patent application relating to a secret invention shall not be published.

(2) The Minister responsible may require the postponement, for a specified period, of the publication of a patent application if there is a presumption that the invention concerned possesses the characteristics of a secret invention.

Art. 64.

(1) The right to a patent for a secret invention concerning matters in the sphere of national defense shall be transferred to the State Treasury, represented by the Minister for National Defense, and the right to a patent for a secret invention concerning matters in the sphere of State security shall be transferred to the State Treasury, represented by the Minister for the Interior.

(2) The holder of the right to a patent for a secret invention shall be entitled to compensation. The provisions of Articles 98a(2) and (3) and 100 shall be applied accordingly to determine the amount and the term of payment of the compensation.

Art. 65.

(1) The patent specification of a secret invention shall not be published.

(2) The grant of a patent for a secret invention shall be entered in the secret part of the Register of Patents.

(3) [Deleted]

Art. 66.

A secret invention may be removed from the category of secret inventions in accordance with the procedure in Article 59(5).

Art. 67.

The procedure in cases concerning secret inventions shall be determined in detail by regulations to be issued by the Minister for National Defense and the Minister for the Interior.

## 7. Annulment and Lapse of Patent

Art. 68.

(1) A patent may be declared null and void, in whole or in part, by the Patent Office, at the request of any person having a legitimate interest therein, if the statutory requirements for the grant of a patent have not been complied with.

(2) The General Public Prosecutor of the Republic of Poland may, in the public interest, move a request that a patent be declared null and void or intervene in an annulment action already pending.

(3) [Deleted]

Art. 69.

Unless otherwise agreed between the parties, in the event of the annulment of a patent, the purchaser, licensee or any other person to whom the patentee has transferred the patent against payment shall be entitled to reimbursement for such payment and to redress of damage, under the general rules of law. The transferor, however, may deduct any profits obtained by the purchaser as a result of exploitation of the invention prior to

annulment of the patent; where the profits exceed the payment and the damages sought, the transferor shall be exempted from liability.

Art. 70.

(1) Any person who in good faith has been granted or has acquired a patent which has subsequently been declared null and void for reasons referred to in Article 40 or transferred to a person entitled to the patent under Article 55 or to a license under such patent, may, where he was exploiting the invention for at least one year before proceedings were instituted for the annulment of the patent or for its transfer or where, during such period, he had made substantial preparations for exploitation of the invention, continue to exploit the invention in his enterprise to the extent to which he was exploiting it up to the time the proceedings were instituted, subject to the obligation on his part to pay appropriate compensation to the patentee. In the absence of agreement between the parties, the amount of the compensation shall be settled in litigation proceedings.

(2) The rights to exploit the invention set out in paragraph (1), shall be recorded in the Register of Patents at the request of an interested party. Those rights may be transferred to another person only together with the enterprise concerned.

Art. 71. [Deleted]

Art. 72.

(1) The Patent Office shall decide that a patent has lapsed where:

1. the entitled person, with the consent of any persons having rights in the patent, surrenders the patent to the Patent Office, or
2. payment of the fee is overdue by more than six months.

(2) The Patent Office shall revoke the decision declaring a patent to have lapsed for the reason specified in paragraph (1)2, where the time limit for the payment of the overdue fee has been reinstated.

Art. 73.

The note concerning the annulment and lapse of a patent shall be recorded *ex officio* in the Register of Patents and published in *Wiadomosci Urzedu Patentowego*.

Art. 74.

Any person who has begun to exploit an invention, or has made the necessary preparations for exploitation of an invention for which the patent has lapsed owing to the delay in payment of the fee, shall be entitled to exploit the invention even if the decision regarding the lapse of the patent has been revoked, subject to the payment to the patentee of appropriate compensation as from the date of the said revocation. Such matters shall be decided by the Patent Office in litigation proceedings. Article 70(2) shall apply *mutatis mutandis*.

## 8. Exercise of Rights Abroad

Art. 75.

An invention subject to a right to a patent belonging to a Polish economic entity or a Polish citizen having a permanent place of residence in Poland, may be filed abroad to obtain protection only after it has been filed with the Patent Office.

Art. 76. [Deleted]

### Part III Utility Models and Rights to Protection

Art. 77.

Any new and useful solution of a technical nature affecting shape, construction or permanent assembly of an object shall constitute a utility model eligible for protection.

Art. 78.

(1) A right to protection shall be granted for utility models.

(2) The grant of a right to protection shall be confirmed by the issue of a certificate of protection.

Art. 79.

(1) The competent authority for the grant of rights to protection and the issue of certificates of protection for utility models shall be the Patent Office.

(2) Grants of rights to protection for utility models shall be entered in the Register of Rights to Protection.

Art. 80.

(1) The grant of a right to protection shall confer the exclusive right to exploit the utility model, to obtain profit therefrom or for professional purposes, throughout the territory of the State.

(2) The term of the right to protection shall be five years starting from the date of filing the application for protection with the Patent Office. At the request of the holder of the right to protection, the term may be extended for a subsequent period of up to five years.

(3) The scope of the right to protection shall be determined by the claims contained in the description of the utility model.

Art. 81. [Deleted]

Art. 82.

The provisions concerning inventions and patents contained in Articles 11, 12, 16(5), (6) and (8), 17 to 20, 23 to 30, 32 to 35, 37 to 46, 48 to 53, 55 to 70 and 72 to 75 shall apply, *mutatis mutandis*, to utility models and to rights to protection.

### Part IV Rationalization Projects

Art. 83.

Any solution filed by its creator and capable of application may be considered by an economic entity as a rationalization project.

Art. 84. to 90. [Deleted]

Art. 91.

Articles 59(1) to (4), 60 and 67 shall apply, *mutatis mutandis*, to rationalization projects.

**Part V**  
[Deleted]

**Part VI**  
**Remuneration for Invention Projects**

Art. 98.

(1) The creator of an invention, entitled to the right to a patent, may transfer such right, for agreed remuneration, to an economic entity or offer the invention for exploitation by such entity.

(2) Where an invention is transferred for exploitation under paragraph (1), the transfer of the right to the patent shall be effective from the date on which such invention is reported to the economic entity, provided that the entity accepts it for exploitation within one month from the report date, unless otherwise agreed by the parties.

Art. 98a.

(1) The creator of the invention shall be entitled to remuneration for the exploitation of his invention by an economic entity, where such entity enjoys the right to a patent under the provisions of Article 20(2) or Article 98(2) or the right to exploit the invention under Article 20(3), unless the agreement stipulates otherwise.

(2) The remuneration referred to in paragraph (1) shall be determined by the economic entity in due proportion to the profits obtained from the exploitation of the invention by the entity, unless the agreement stipulates otherwise.

(3) Unless the agreement stipulates otherwise, the remuneration referred to in paragraph (1) shall, in compliance with the principle laid down in paragraph (2), be paid as a lump sum at the latest within two months after the completion of one year from the date on which the initial profits have been obtained from the exploitation of the invention or in installments within two months after the completion of each year in which profits have been obtained from the exploitation of the invention.

Art. 98b.

Articles 98 and 98a shall apply, *mutatis mutandis*, to the creator of a utility model.

Art. 99.

The creator of a rationalization project shall be entitled to remuneration for the exploitation of his project. The provisions of Article 98a(2) and (3) shall apply *mutatis mutandis*.

Art. 100.

The creator of an inventive project may require an appropriate increase in the payment or remuneration if it is grossly disproportionate to the profits obtained from the exploitation of that project by the economic entity.

Art. 101. to 106. [Deleted]

Art. 107.

(1) Remuneration paid for inventive projects shall not be liable to be refunded.

(2) Paragraph (1) shall not apply where remuneration has been paid to a person who has acted in bad faith or as a result of a punishable act.

Art. 108.

The provisions of civil law shall apply, *mutatis mutandis*, to the remuneration for inventive projects with regard to matters not governed by this Law.

Art. 109. [Deleted]

Art. 110.

(1) The creator of an inventive project may assert his claim to remuneration before the district court (*Sad Wojewódzki*). The creator shall not be liable to pay court costs.

(2) The provisions of the Code of Civil Procedure governing proceedings in relation to employees' claims shall apply, *mutatis mutandis*, in the case referred to in paragraph (1).

Art. 111.

(1) Any person assisting the creator of an inventive project in the accomplishment or elaboration of the project in an economic entity shall be entitled to remuneration, as stipulated in the contract.

(2) Persons who have collaborated in the implementation of an inventive project or who have contributed to the acceleration of its exploitation or promotion may receive awards.

(3) [Deleted]

(4) The provisions of Article 110 shall apply, *mutatis mutandis*, to the remuneration referred to in paragraph (1).

Art. 112. [Deleted]

## Part VII Proceedings, Registers, Fees

Art. 113.

When passing decisions and orders under this Law, the Patent Office, government bodies and local government agencies shall apply the provisions of the Code of Administrative Procedure; in the case of litigation proceedings, they shall be applied to the extent provided for in Article 115(2)2.

Art. 114.

(1) The Patent Office shall apply the litigation procedure when taking a decision on:

1. the annulment of a patent or of a right to utility model protection;
2. [deleted];
3. the transfer of a patent or of a right to utility model protection obtained by a person not entitled thereto;
4. the recognition of a patent or of a right to utility model protection as a dependent patent or a dependent right to protection;
5. the right to exploit an invention or a utility model in the cases referred to in Articles 43, 70 and 74;
6. the ascertainment that a specified production is not covered by a particular patent or a particular right to utility model protection;
7. [deleted];
8. [deleted];
9. any other matters which, in accordance with the provisions, come under the competence of the Patent Office when applying the litigation procedure.

(2) The Patent Office shall take its decisions, in the matters referred to in paragraph (1), in boards on which the organizations referred to in Article 9 shall be represented.

Art. 115.

(1) Appeals against decisions of the Patent Office and against orders of the Office laid down in Article 113 and appeals against decisions of the Patent Office and against orders of the Office given when applying the procedure referred to in Article 114 shall be heard by the Board of Appeals at the Patent Office. The Board of Appeals shall reach its decisions in boards on which the organizations referred to in Article 9 shall be represented. The members of the Board of Appeals may not be those persons who have participated in giving the judgment appealed.

(2) The Council of Ministers shall, by way of regulation:

1. set up the Board of Appeals and determine its composition and manner of appointment as well as the remuneration of its members;
2. determine the principles of the litigation procedure before the Patent Office and the principles of procedure before the Board of Appeals.

Art. 116.

(1) In the hearing of matters by the Patent Office in boards in accordance with the procedure referred to in Article 114, the chairmen shall be judges appointed by the Minister for Justice from among the judges of the district courts having their seat within the territory of the capital city of Warsaw.

(2) In the hearing of matters by the Board of Appeals at the Patent Office in boards, the chairmen shall be judges appointed by the First President of the Supreme Court from among the judges of that Court.

Art. 117.

The President of the Patent Office, the First President of the Supreme Court and the General Public Prosecutor of the Republic of Poland as well as the Ombudsman may initiate an extraordinary appeal against any final decision of the Patent Office and the Board of Appeals which terminates the proceedings and grossly violates the law. The provisions of the Code of Civil Procedure shall apply, *mutatis mutandis*, to such extraordinary appeal.

Art. 118.

Cases which do not fall within the provisions of Articles 113 to 117 and which relate to civil law claims concerning inventive matters shall be settled in court proceedings.

Art. 119.

(1) The Patent Office shall keep a Register of Patents and a Register of Rights to Utility Model Protection in which entries required by this Law shall be made.

(2) Everyone shall be deemed to know the contents of the entries in the Registers.

(3) The President of the Patent Office shall lay down the rules which govern the keeping of the Registers, the conditions and manner of making entries therein, the inspection of the Registers and obtaining extracts therefrom.

Art. 120.

(1) The protection of inventions and utility models shall be subject to single fees and renewal fees payable at prescribed times throughout the term of protection.

(2) The Council of Ministers shall, by way of regulation referred to in Article 115(2), determine the principles governing the payment and the amount of such fees, the time limits for payment and the cases where a total or partial exemption from such fees may be granted, as well as the principles under which payment may be deferred and time limits reinstated.

## Part VIII Penal Provisions

Art 121.

(1) Anyone who falsely claims to be the creator of another's inventive project shall be liable to imprisonment for a term not exceeding one year, limitation of freedom or a fine.

(2) The same penalty shall apply to anyone who infringes in any other way the rights of the creator of an inventive project.

Art. 122.

(1) Anyone marking articles which do not enjoy patent or utility model protection with statements or signs calculated to give the false impression that the articles do enjoy such protection shall be liable to



detention for a period not exceeding three months, limitation of freedom for a period not exceeding three months or to a fine.

(2) Anyone who puts on the market, or prepares or stocks for that purpose, the articles mentioned in paragraph (1), with the knowledge that they are falsely marked, or provides, by advertisements, announcements, communications or in other ways, information calculated to give the impression that the articles enjoy legal protection shall be liable to the same penalties.

Art. 123.

(1) Anyone who usurps another's right to a patent or to utility model protection and who submits another's invention for the purpose of obtaining a patent or another's utility model for the purpose of obtaining a right to protection shall be liable to imprisonment for a period not exceeding two years, limitation of freedom or to a fine.

(2) Anyone infringing in any other way another's right to a patent or to a right to protection shall be liable to imprisonment for a period not exceeding one year, limitation of freedom or to a fine.

## **Part IX**

### **Transitional Provisions and Final Clauses**

Art. 124.

(1) The provisions of the Law relating to economic entities shall apply to legal or natural persons, in particular to those pursuing economic activities.

(2) Rights belonging to the State Treasury shall be exercised in its name by the agency which represents it.

Art. 125. to 128. [Deleted]