

# ORDINANCE OF THE PRESIDENT OF THE PATENT OFFICE OF THE REPUBLIC OF POLAND

of March 23, 1993

on the protection of inventions and utility models

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By virtue of Article 27(2), Article 38(5) and Article 119(3) of the Law of October 19, 1972 on Inventive Activity (O.J. 1993 No 26 item 117), the following provisions shall be observed:

## CHAPTER 1

### GENERAL PROVISIONS

1.–

Any reference in this Ordinance to:

- i) the Law – means the Law of October 19, 1972 on Inventive Activity (O.J. 1993 No 26, item 117) and any Article referred to in this Ordinance without a detailed reference – means Articles of this Law,
- ii) the Patent Office – means the Patent Office of the Republic of Poland,
- iii) applicant – means any person, who has filed, in his or her own name, a patent application or utility model application with the Patent Office,
- iv) additional application – means a patent application or utility model application with a request for granting a patent of addition or a right of protection of addition,
- v) priority – means the priority to obtain a patent or a right of protection,
- vi) earlier priority – means the priority to obtain a patent or a right of protection of an application filed abroad or of the display of an invention or a utility model at an exhibition,

- vii) state of the art – means everything made available before the date according to which the priority to obtain a patent or a right of protection is determined,
- viii) Paris Convention – means the Paris Convention for the protection of Industrial Property of March 20, 1883 in its text binding on the Republic of Poland,
- ix) Treaty – means the Patent Cooperation Treaty of June 19, 1970 in its text binding on the Republic of Poland,
- x) Regulations – means the Regulations under the Treaty,
- xi) international application – means a patent application or a utility model application filed under the Treaty,
- xii) receiving Office – means the patent office with which the international application has been filed,
- xiii) designated Office – means the patent office designated by the applicant under Chapter I of the Treaty,
- xiv) elected Office – means the patent office elected by the applicant under Chapter II of the Treaty,
- xv) International Bureau – means the International Bureau of the World Intellectual Property Organisation,
- xvi) national fee – means the fee collected for the international application by the Patent Office acting as the designated or elected Office.

2.–

The provisions of this Ordinance shall apply accordingly to international applications in matters which do not fall under the provisions of the Treaty and the Regulations and of paragraphs 38–43 of this Ordinance.

## **CHAPTER 2**

### **PATENT APPLICATION**

3.–

- 1) For the purpose of the establishment of the filing date, a patent application shall contain at least:
  - i) a request,
  - ii) a description of the invention,
  - iii) one or more patent claims,
  - iv) drawings, if they are necessary for the understanding of the invention.
- 2) The patent application shall also contain:
  - i) an abstract,
  - ii) if the applicant seeks for having the earlier priority admitted in his favor, a priority document consisting of the documents specified in section 1 of the Annex to this Ordinance,
  - iii) if the applicant takes advantage of the earlier priority, a declaration of the applicant with the indication which priority dates are claimed for separate patent claims included in the application (the declaration on the priority dates) and drawn up in accordance with the requirement prescribed in section 2 of the Annex to this Ordinance,
  - iv) if the priority document does not denote the applicant, a declaration of the applicant on the grounds for enjoying the earlier priority, with the indications specified in section 3 of the Annex to this Ordinance,
  - v) if the applicant refers to the deposited microorganism for the purpose of the due disclosure of the invention, a certificate confirming that the deposit of the microorganism has been filed with a recognized international collection of microorganisms or with a national collection of microorganisms indicated by the President of the Patent Office in the communication published in the official gazette “Wiadomosci Urzedu Patentowego”, which shall contain at least the indications specified in section 4 of the Annex to this Ordinance,
  - vi) if the applicant has appointed a representative, a document with the power of attorney, containing the indications specified in section 5 of the Annex to this Ordinance.

3) The documents specified in section 2(ii)–(v) may be furnished subsequently, within four months from the date of filing the application with the Patent Office.

4.–

1) The request shall contain:

- i) the name and address of the applicant,
- ii) a petition for the grant of a patent or a patent of addition with the indication of the number of the main patent or the number of the patent application filed for the obtaining of the main patent,
- iii) the title of the invention,
- iv) the name and address of the inventor,
- v) if the applicant is not the inventor, the indication of the ground of the right to the patent,
- vi) a list of the documents attached,
- vii) the signature of the applicant or, if the applicant acts through a representative – the signature of the representative with the indication of his name.

2) The request shall also contain:

- i) if the applicant seeks for the recognition of the earlier priority, the declaration of the applicant that he or she wishes to enjoy the earlier priority, with the indication, at least, of the date at, and the country in, which the application has been filed abroad or the name, location and country of an exhibition and the date of the display of the invention at the exhibition,
- ii) if there are several applicants and they have not appointed a common representative, the designation of a person who is entitled to receive the correspondence.

3) When providing the indications referred to in section 1(i), shall be advisable to:

- i) mention the name of the applicant in the case where it is a legal person,
- ii) if the applicant is an economic entity lacking legal personality – mention the full name of the person running business activity,
- iii) if a State organizational unit lacking legal personality files the application in the name of the State Treasury – mention the name of that State organizational unit.

5.–

1) The description of the invention, hereinafter referred to as “description”, shall present the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

2) The description may not contain the elements contrary to the public order or morality or indicate the features and merits which the invention evidently lacks of, as well as fancy or proper names.

3) Subject to the provisions of section 4 below, the description shall:

- i) first state the title of the invention,
- ii) specify the technical field to which the invention relates,
- iii) indicate the background art which, as far as known to the applicant and regarded as useful for the understanding of the invention, especially of its novelty and non-obviousness, for searching in the state of the art relating to the invention as filed; it is advisable to cite, in this part of the description, bibliographic data of the documents reflecting the state of the art,
- iv) disclose the invention, as claimed, in such a manner both its nature and solution can be understood to the extent necessary for the invention to be carried out; if the biotechnological invention can not be sufficiently disclosed in the description, an additional reference to the deposited microorganism should be made, indicating at least the name of institution with which the deposit has been made and the file number accorded by this institution or the free availability of the microorganism should be mentioned,
- v) state advantageous effects, if any, of the invention with reference to the background art,
- vi) briefly describe the figures in the drawings, if the patent application contains drawings,
- vii) set forth, in details, at least one example of carrying out the invention, referring to the drawings, if the patent application contains drawings,

- viii) indicate explicitly, if it is not obvious from other parts of the description or from the nature of the invention, the way in which the invention is capable of exploitation.
- 4) The manner and order of the description, specified in section 3 above, may be changed if, because of the nature of the invention, it would afford a better understanding and presentation thereof.
- 5) The title of the invention shall, if possible, describe explicitly the subject–matter of the invention in relation to the technical features of the solution specified in the description and patent claims; it may not contain fancy and proper names or expressions relating directly to the merits or new features of the invention.
- 6) The provisions of sections 2–5 shall apply accordingly to the description in the additional application; however, the part of the description described in section 3(iii) shall present the invention being the subject–matter of the main patent, even if that invention does not form a part of the state of the art, and indicate the number of the main patent.

6.–

- 1) Patent claims, hereinafter referred to as “claims”, shall define the invention, as claimed, by the indication, in a manner complete and relevant for the matter for which protection is sought, of all necessary technical features of the solution. The claims should not indicate the features which the invention lacks of. They also should not contain expressions being of such nature that they would evaluate the invention or its individual features.
- 2) Each claim shall be expressed in one single sentence drafted in clear and concise manner.
- 3) The claims shall be fully supported by the description.
- 4) The number of the claims shall be reasonable in consideration of the subject–matter of the invention. If there are more than one claim, they shall be numbered consecutively in Arabic numerals.

7.–

- 1) An independent claim shall contain:
- i) a non–characterizing portion, indicating a group of the technical features of the invention as claimed, which are necessary for the definition of the claimed subject–matter and which, in combination, are part of the prior art; a non–characterizing portion shall commence with the title of the invention or with the part of the title of the invention, which relates to the invention claimed with the claim in question, and it may, when appropriate, be limited solely to the title of the invention or its relevant part,
  - ii) a characterizing portion preceded by the words “characterized in that”, stating concisely the technical features (characterizing features) of the invention as claimed, which are expected to distinguish it from among other technical solutions having the group of features specified in a non–characterizing portion.
- 2) The provisions of section 1 shall apply accordingly to the independent claim in an additional application; however, a non–characterizing portion of the independent claim shall indicate a group of technical features necessary for the definition of the claimed subject–matter and being, at the same time, the group of the technical features of the invention protected by the main patent, even if the invention does not form a part of the state of the art, and shall indicate the number of the main patent preceded by the words “according to the patent No.”.
- 3) A dependent claim shall contain:
- i) brief determination of the subject–matter claimed, forming the shortened title of the invention or shortened relevant part of the title of the invention, placed at the beginning of the claim,
  - ii) a reference to a claim or claims on which it depends; the reference shall indicate the number of the claim or claims to which it refers,
  - iii) a characterizing portion preceded by the words “characterizing in that”, stating characterizing features, additionally claimed with the dependent claim in question.
- 4) The claim referred to in section 3, may refer to two or more other claims (multiple dependent claim) in the alternative only. In that case, a part of the dependent claim, referred to in section 3(ii) shall contain a word “or” placed between the numbers of the claims. A multiple dependent claim may not be referred to in other multiple dependent claim, as well as be dependent on more than one independent claim.
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5) The dependency of a claim on one claim shall be construed as including, by the dependent claim, along with its own characterizing features, all features of the subject-matter claimed, specified in the claim to which it refers.

6) The dependency of a claim on more than one claim shall be construed as including by the dependent claim, along with its own characterizing features, all features of the subject-matter claimed, specified in the claim to which it refers and in relation to which it is considered. A multiple dependent claim shall be considered separately in relation to each particular claim to which it relates.

7) Claims shall not, except where absolutely necessary, rely on references to the description or drawings. In particular, they shall not rely on such references as: “as described in part ... of the description” or “as illustrated in figure ... of the drawings”.

8) Where the application contains drawings, the separate characterizing features in the claims shall be followed by the reference signs relating to the separate parts of the drawings corresponding with those features. The reference signs shall be placed between parentheses and underlined. If the inclusion of the reference signs does not particularly facilitate better understanding of the claims, it should not be made.

9) Where the applicant seeks for the recognition of the priorities determined according to more than one date (para 14(4)–(6)), the content of the claims and, if the application contains dependent claims, also the system of their dependency, should be such that only one priority date corresponds to each of the claims.

8.–

In the application relating to new chemical compounds or microorganisms in which, because of the nature of the invention, the drawing up the claims in the manner prescribed in para 7(1)–(6) is not appropriate, the definition in the claims of the structure of a chemical compound or, in the case of a microorganism – the reference to the deposited microorganism, with the indication of the institution with which the deposit has been made, as well as the file number accorded by this institution, shall be sufficient.

9.–

1) The drawings shall illustrate the subject-matter of the invention in the form of a schematic pattern. The provision of para 5(2) shall apply accordingly.

2) If the nature of the invention is such that it can be illustrated with drawings but they are not necessary for the understanding of the invention

- i) the applicant may include the drawings in the application,
- ii) the Patent Office may require from the applicant to furnish the drawings within the prescribed time limit.

3) Subject to para 10 section 2(iii), sections 3) and 5), structural chemical compounds shall be considered as drawings; any reference, in subsequent provisions, to figures shall mean also separate chemical structural formulae.

10.–

1) The abstract of the description, hereinafter referred to as abstract, shall merely serve for use as technical information and as a scanning tool for purposes of searching in the particular technical field, especially by assisting the interested persons in formulating an opinion whether there is a need for consulting the description, claims and drawings in the application and, when patent has been granted – the patent specification.

2) The abstract shall consist of the following:

- i) a summary of the subject-matter and characterizing technical features of the invention, where it is not evident from the definition of the subject-matter, the indication of the intended application of the invention,
- ii) where the applicant refers to the deposited microorganism – the indication of the depository institution with which the deposit has been made for the purpose of the due disclosure of the invention, and the file number accorded by that institution,
- iii) where appropriate when considering the nature of the invention – the chemical formula which, from among all those contained in the application, best characterizes the invention; in the case of a structural

formula, that formula should be drawn up on a separate sheet and attached to the abstract. When reasonable, the inclusion of more than one structural formula shall be admissible.

3) The abstract shall indicate the number of the figure of the drawings which, among those contained in the application, best illustrates the invention. When reasonable, the indication of more than one figure shall be admissible.

4) The abstract shall be concise and preferably shall not exceed one-third of a sheet of a typewritten copy. The abstract shall not contain statements on the merits or value of the invention or information and speculative application of the invention at the definite place, time or by definite persons. It shall not also contain expressions contrary to public order or morality or fancy names.

5) Each main technical feature of the invention mentioned in the abstract and illustrated by the indicated figure of the drawings shall be followed by reference signs relating to that figure, placed between parentheses and underlined.

6) The Patent Office may correct the abstract in order to bring it into line with the requirements specified in sections 2)–5) or to eliminate obvious mistakes and grammatical errors, in so far as it is not necessary to make substantive changes in the content of the abstract. For the purpose of the publication of the patent application, the title of the invention may also be corrected to the extent specified in para 5(5).

11.–

Terminology and signs shall be consistent throughout the application and in conformity with generally accepted rules and practice.

12.–

1) The description, the claims and the drawings shall be furnished in three copies, the abstract in two copies and other documents of the application – in one copy.

2) The description, the claims, the abstract and the drawings shall be signed by the applicant or his representative.

3) All the documents making up the application shall meet physical requirements specified in para 7 of the Annex to this Ordinance.

## **CHAPTER 3**

### **UNITY OF THE INVENTION**

13.–

1) The application shall relate to one invention only.

2) However, it shall be permitted that the application relate to more than one invention, provided that such inventions are so linked in the application as to form a single and clear inventive concept. In particular, one of the following possibilities are permitted in the application:

- i) the inclusion, in the application, of an independent claim for a product, of one independent claim for a process specially adapted for the manufacture of the said product, and of one independent claim for an apparatus or other technical means specifically designed for carrying out the said process, or
- ii) the inclusion, in the application, of one independent claim for a process and of one independent claim for an apparatus or other technical means specifically designed for carrying out the said process.

3) With observance of the provisions of sections 1) and 2), it shall be permitted to include in the same application two or more independent claims of the same category, i.e. product, process or apparatus, which can not readily be covered by one common claim.

4) With observance of the provisions of sections 1) and 2), it shall be permitted to include in the same application a reasonable number of dependent claims claiming specific forms of the invention claimed in an independent claim, even where the features of any dependent claim could be considered as constituting in themselves an invention.

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5) It shall not be permitted to include in the same application an invention relating to a product and an invention relating to a process for the manufacture of an active substance being a component of the said product.

## **CHAPTER 4**

### **PRIORITY RIGHT**

14.–

1) The first regular application duly filed in a member country of the Paris Convention shall be recognized as giving rise to a right of priority. The priority shall also cover any features explicitly disclosed in the said patent or utility model application which are not included in its claims.

2) The regular application, referred to in section 1) shall be deemed to be duly filed if it was filed in a manner which makes possible to establish at least the date at which it was filed. Subsequent facts relating to the said application in a given country shall not influence on the right of priority of that application.

3) If in the country referred to in section 1) a subsequent application for the same subject matter has been filed following the first application (previous first application), the said subsequent application shall be considered as the first application in the meaning of section 1), provided that at the date of filing the subsequent application the previous first application was withdrawn, abandoned or refused, without being open for public inspection and without leaving any rights outstanding and did not serve as a basis for claiming the right of priority. In such case, the previous first application may not thereafter serve as a basis for claiming the right of priority.

4) In the patent application filed with the Patent Office, the right of priority of two or more first applications filed abroad may be claimed (multiple priorities).

5) In the patent application filed with the Patent Office, the right of priority may be claimed of the first application filed abroad and relating only to some parts of the subject–matter of the application filed with the Patent Office (selected priority). In such case, the priority for the remaining parts of the subject–matter of the invention shall be determined according to the date of filing the application with the Patent Office.

6) In the patent application filed with the Patent Office, multiple priorities and the selected priority may be claimed at the same time.

15.–

In the application filed with the Patent Office, the right of priority of the display of the invention at a national public exhibition, indicated in an ordinance of the President of the Patent Office (Art. 24(2)) or at an official or officially recognized international exhibition organized on the territory of a member country of the Paris Convention, may be claimed.

## **CHAPTER 5**

### **UTILITY MODEL APPLICATION**

16.–

1) The provisions of paragraphs 3–12, 14 and 15, taken together with sections 2) and 3) below, shall apply accordingly to the utility model application.

2) The utility model application shall contain the drawing or drawings of the utility model.

3) The utility model application may relate to one utility model only.

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## CHAPTER 6

### EXAMINATION OF THE PATENT AND UTILITY MODEL APPLICATION

17.–

- 1) Upon receipt of a patent application, the Patent Office shall accord it a serial number, ascertain the filing date and notify the applicant of these facts.
- 2) The papers received shall not be considered the patent application if they do not contain a request and at least one of the documents specified in para 3 section 1(ii)–(iv).
- 3) If an application has been mailed at a Polish post office but the date of mailing can not be ascertained at the moment of the receipt of the application by the Patent Office, the filing date of the patent application shall be the date at which it was received by the Patent Office. This determination shall be subject to a complaint.

18.–

- 1) Upon receipt and registration of the patent application (para 17.1)), the Patent Office shall check whether the application contains:
  - i) a request which implies that the applicant seeks for the grant of a patent or a patent of addition,
  - ii) a part which on the face of it appears to be a description,
  - iii) a part which on the face of it appears to be a claim or claims.
- 2) Where the Patent Office finds that the patent application does not meet the requirements prescribed in section 1, shall invite the applicant to correct the deficiencies as indicated, within the prescribed time limit. In that case, the filing date shall be the date at which the missing documents have been received, which fact shall be ascertained by a determination issued by the Patent Office. The provision of para 17.3) shall apply accordingly.
- 3) If the indicated deficiencies in the patent application are not corrected within the prescribed time limit, the application shall be deemed to be withdrawn and the proceedings shall be discontinued.

19.–

- 1) If, when checking the patent application according to the provision of para 18.1), the Patent Office finds, that the application refers to drawings which have not been attached thereto, it shall notify the applicant of that finding and fix a time limit for him to correct that deficiency. In that case, the date of filing shall be the date at which the missing drawings have been received, which fact shall be ascertained by a determination issued by the Patent Office. The provision of para 17.3) shall apply accordingly.
- 2) If within the fixed time limit the applicant fails to furnish the drawings, referred to in section 1), the reference to the drawings in the application shall be deemed not to be made.

20.–

If, when checking the patent application according to para 18.1), the Patent Office finds that the applicant is not entitled to file the application under Article 4, it shall refuse to grant a patent.

21.–

- 1) The Patent Office shall, at the request of the applicant, issue for the purpose of claiming priority in other countries a document certifying that the patent application was filed with the Patent Office (the priority document).
- 2) Only the patent application which complies with the requirements provided for in para 3.1) may serve as a basis for drawing up the priority document.
- 3) The priority document shall consist of a certificate issued by the Patent Office with the indication of the name of the applicant, the title of the invention (if defined in the application), the filing date and the file number, and of copies of the documents, from among those specified in para 3.1(ii)–(iv), which have been



attached by the applicant to the request in the application on the basis of which the filing date of that application is established. The Patent Office shall authenticate the said copies as true copies.

22.–

1) If the patent application has been filed by a representative and the Patent Office finds that the power of attorney is missing, it shall invite the person purporting to be the applicant's agent, to furnish the said document within the fixed time limit and shall notify the applicant of that fact. In case, where the power of attorney is not furnished within the fixed time limit, the application shall be deemed to be withdrawn and the proceedings shall be discontinued, unless the applicant confirms, within the said time limit that the application has been filed.

2) If the Patent Office finds that the grounds for claiming the right to a patent have not been indicated, it shall inform the applicant of that fact and fix a time limit for him to correct that deficiency. If the applicant does not comply with the determination of the Patent Office within the fixed time limit, the application shall be considered withdrawn and the proceedings shall be discontinued.

3) If the Patent Office finds that the filing fee has not been paid, it shall invite the applicant to correct that deficiency within one month. Within the same time limit the applicant may file a request for being exempted from paying a part of the fee. In case, where the fee is not paid and the request for the exemption is not filed, the application shall be considered withdrawn and the proceedings shall be discontinued.

23.–

If the Patent Office finds that the abstract is missing, it shall invite the applicant to correct this deficiency within the prescribed time limit. In case, where the abstract is not furnished within the said time limit, the application shall be considered withdrawn and the proceedings shall be discontinued. This provision shall apply accordingly, where the abstract grossly defies the requirements specified in para 10. The determination inviting to correct the deficiencies in the abstract shall be subject to a complaint.

24.–

In case, where the Patent Office finds, in the application, omissions and major defects other than those specified in para 19 and 20, it shall issue a determination inviting the applicant to correct them (Article 29(1)).

25.–

1) If the Patent Office finds that the documents specified in para 3.2(ii)–(iv) have not been filed within four months from the filing date of the application with the Patent Office, it shall deem the declaration claiming priority to be withdrawn and a determination shall be issued to this end. The determination shall be subject to a complaint.

2) If the Patent Office finds that the certificate of the deposit of microorganism, referred to in para 3.2(v), has not been furnished within four months from the filing date, the reference, by the applicant, to the deposited microorganism does not have effect for the purpose of the evaluation of the disclosure of the invention in the application. The determination issued by the Patent Office to this end shall be subject to a complaint.

26.–

When reasonable, the Patent Office may invite the applicant to furnish, within the prescribed time limit, proofs and explanations relating to the application in support of his right to a patent or a patent of addition or of the priority right.

27.–

1) The following time limits, which should be observed by the applicant during the proceedings, shall be fixed by the Patent Office:

- i) if the applicant has his place of residence or place of business in Poland – of one month,
- ii) if the applicant has his place of residence or place of business in other country – of two months.

2) When reasonable, the Patent Office may extend the time limit, referred to in section 1(i), however no more than by two months.

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3) If by the expiration of the prescribed time limit the applicant notifies the Patent Office of the reasons which justify the delay, the Patent Office shall excuse non-observance of the time limit, provided that the delay is no longer than two months.

28.–

- 1) Any documents or letters the Patent Office shall send to the address indicated by the applicant.
- 2) If the applicant has appointed an agent, the Patent Office shall send letters to the agent's address.
- 3) If there are several applicants and they have not appointed a common agent, the Patent Office shall send letters to the address of a person designated to receive correspondence. If the applicants have not designated such person, the applicant first named in the request shall be considered as such. The delivery of correspondence to that person shall have the same legal effects as its delivery to each applicant separately.
- 4) The persons indicated in sections 1)–3) shall notify the Patent Office of each change in their names or addresses. In the case of failing to do so, the delivery of a letter at the former address shall have the legal effect, unless a new address is known to the Patent Office.

29.–

1) The Patent Office shall publish a patent application (Article 34) in the official gazette “Biuletyn Urzedu Patentowego” with the following indications:

- i) an international classification code,
- ii) the file number,
- iii) the date of filing,
- iv) the priority date and country of the application filed abroad or the indication of the exhibition,
- v) the name of the applicant,
- vi) the place of residence or place of business and the country of the applicant,
- vii) the name of the inventor,
- viii) the title of the invention,
- ix) the abstract and a figure of the drawings, if necessary,
- x) the number of claims.

2) The date of publication of the patent application shall be the day on which the indications specified in section 1) have been published in the “Biuletyn Urzedu Patentowego”.

3) The abstract, referred to in section 1(ix) may be replaced, in the publication of the application, with a patent claim, if the Patent Office considers that it serves better illustration of the invention.

4) The patent application shall not be published if before the termination of the technical preparations for publications it has been withdrawn or deemed to be withdrawn or the Patent Office has refused to grant a patent and the decision to this end has become final.

30.–

1) The Patent Office shall refuse to admit the right of priority in whole or partially, if it finds that:

- i) the applicant is not entitled to enjoy the right of priority,
- ii) the application filed abroad, the priority of which the applicant claims, is not the first application in the meaning of the provisions of para 14.1)–3), or
- iii) the exhibition, the display at which is a basis for claiming priority by the applicant, does not comply with the requirements prescribed in para 15, or
- iv) the subject matter of the application filed with the Patent Office or the relevant part of that subject matter differs from the subject matter in respect of which the applicant is vested with the right of priority, or
- v) the applicant has not kept the time limit for furnishing the declaration of taking advantage of the earlier priority or the time limits for filing the application pursuant to Articles 24 and 25, or the applicant is not entitled to the earlier priority pursuant to Article 25.

2) The determination referred to in section 1) shall be subject to a complaint.

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31.–

1) If the Patent Office finds that the patent application does not comply with the requirements of unity of invention, it shall fix a time limit for the applicant for filing separate patent applications and paying fees for those filings. The determination in this respect shall be subject to a complaint. The fee already paid for the first filing shall be considered as the fee for filing the invention mentioned in the first claim from among those upheld by the applicant.

2) If the applicant does not file, within the fixed time limit, separate applications or pay fees for those filings, the application shall be considered as relating to the invention first mentioned in the claims. In that case, the application in the part relating to the remaining inventions shall be considered withdrawn and the proceedings shall be discontinued.

3) The applicant may, not having been invited by the Patent Office, file separate applications relating to the inventions covered by the first application and pay the filing fees for those applications at the same time.

4) In the case referred to in section 3), the subsequent applications shall be considered filed at the filing date of the first application, if they have been filed before the publication of the first application. However, the Patent Office shall accord, for the subsequent applications, the filing date of the first application in spite of the fact that they have been filed after the publication, if the first application does not comply with the requirements of unity of invention. The determination on the refusal to accord the filing date of the first application shall be subject to a complaint.

32.–

1) The Patent Office may invite the applicant to submit explanations in relation to the contents of the description, the claims or the drawings as well as to make corrections or complements in the description, the claims or the drawings if it seems to be necessary for the proper illustration of the invention; otherwise, the proceedings shall be discontinued. The determination on making corrections or complements shall be subject to a complaint.

2) The Patent Office may require from the applicant to furnish, within the fixed time limit, models or samples, if it considers that it enables substantially the understanding of the invention and makes not much difficulty for the applicant.

3) If the applicant fails to furnish, within the fixed time limit, models and samples, the Patent Office shall decide on the grant of a patent on the basis of the documents as received.

4) The size of models and samples shall not exceed 50 cm x 50 cm x 50 cm. Models and samples shall be in a stabile form.

5) After having been examined, the models and samples shall be destroyed, unless the applicant, when furnishing them, demands them to be returned to him.

33.–

If the applicant makes, during the processing of the application, corrections and complements which change the gist of the invention or justify the change in the priority to obtain a patent, the Patent Office shall declare non-admissibility thereof and shall issue a determination in this respect. The determination shall be subject to a complaint.

34.–

After having carried out the examination, the Patent Office shall:

- i) not consider the subject matter of the invention as a technical solution, especially where it finds that it does not relate to any material product described by means of technical features of its structure or composition, or to a definite technical method of influence the substance.
  - ii) not consider the subject matter of the invention as a new solution, if it may produce evidences, in light of which all substantial features of that solution, taken together, cover entirely the solution already known,
  - iii) consider the invention claimed and complying with the requirement of novelty as an obvious solution, if it may evidence the state of the art to the extent which justify the ascertainment that the
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implementation or application of the invention results, when considering the average knowledge of a person skilled in the art, directly from that state of the art,

- iv) not consider the subject matter of the application as susceptible of application, especially where it finds that it is impossible to use it when considering generally adopted and recognized scientific principles or if it is only susceptible of a single application.

35.–

1) The Patent Office shall decide on the refusal to grant a patent in cases referred to in para 34, as well as in the event where it finds that:

- i) the invention claimed is excluded from the patent protection (Article 12),
- ii) the solution has not been presented in a manner which sufficiently discloses all substantive features necessary for it to be carried out or the applicant has not determined in the claims the scope of protection sought through the indication of at least one technical feature relating to the subject matter of the application (Article 26),
- iii) a person seeking for a patent is not entitled to a patent,
- iv) the applicant is not entitled to obtain a patent pursuant to Article 4, or
- v) a patent has been granted to a patentee enjoying the right of priority.

2) The Patent Office shall, before taking the decision referred to in section 1), fix for the applicant a time limit for reacting on proofs and documents which may evidence the lack of statutory requirements for granting a patent.

3) In the case, where the lack of statutory requirements for granting a patent relates only to a part of the application and the applicant has not restricted the scope of protection sought, the provisions of sections 1) and 2) shall apply accordingly.

36.–

1) If the Patent Office does not find the lack of statutory requirements for granting a patent and the time limit for submitting observations in this respect by third parties expired, it shall decide on the grant of a patent.

2) The Patent Office may, before taking the decision referred to in section 1), require from the applicant to remove, from the description, the claims and the drawings, the parts contrary to public order or morality or defining features or merits, which the invention evidently lacks of, as well as fancy and proper names; it shall issue a determination to this respect. The Patent Office itself may only correct the description, the claims or the drawings in order to remove obvious mistakes and linguistic errors.

37.–

1) The provisions of paragraphs: 17, 18, 20–33, 34(i), (ii) and (iv), 35 and 36, subject to the provisions of sections 2) and 3), shall apply accordingly to the examination of the utility model application.

2) The checking of the utility model application shall, apart from the subject matter referred to in para 18, relate also to the determination that the application includes the drawing or drawings.

3) If, when examining the application, the Patent Office finds that the drawing attached does not illustrate the solution, the provision of para 35.1(ii) shall apply accordingly.

## **CHAPTER 7**

### **EXAMINATION OF INTERNATIONAL APPLICATIONS**

38.–

1) The international application filed with the Patent Office acting as a receiving office shall be furnished in the English, French or German language.

2) Any documents making up the international application shall be furnished in three copies.

3) The request in the international application shall be drawn up on a form prepared by the International Bureau.

39.–

1) The Patent Office shall notify, in the official gazette “Biuletyn Urzedu Patentowego”, of the publication, by the International Bureau, of the international application with which the applicant seeks for protection in Poland.

2) The Patent Office shall publish, in the “Biuletyn Urzedu Patentowego”, international patent applications which are processed by the Patent Office acting as a designated or elected Office.

40.–

1) The Patent Office shall initiate the processing of the international application, as a designated or elected office, after having received, within the time limits prescribed in the Treaty, the translation of the international application into the Polish language and after having collected the national fee.

2) The translation of the international application, referred to in section 1), shall contain:

- i) the description of the invention or utility model,
- ii) a patent or utility model claim,
- iii) the text on the drawings,
- iv) the abstract of the description of the invention or utility model.

3) The translation of the claims, referred to in section 2(ii) shall contain the translation of their original version and of the version as amended under Article 19 of the Treaty as well as the translation of any statement filed pursuant to that provision of the Treaty.

4) Where the parts of the international application specified in section 2), have been amended under Article 34(2) of the Treaty, the provision of section 3) shall apply accordingly.

5) The translation of the international application shall be furnished in three copies.

6) The translation of the international application shall be accompanied by the documents referred to in para 3.2(ii)–(v) and the statement evidencing the right to a patent or a right of protection.

7) The documents referred to in section 6) shall be furnished in one copy.

8) If the documents specified in section 6) have been prepared in a language other than the Polish, they shall be accompanied by their translation into the Polish language, signed by a translator and certified by the applicant or his agent.

9) The provision of section 8 shall not apply to the document referred to in para 3.2(ii), if the document has been drawn up in the English, German, French or Russian language or it is accompanied by the translation into one of those languages.

10) Where the Patent Office finds, when processing the application referred to in section 1), that the documents specified in section 6) have not been furnished, it shall invite the applicant to furnish them within the fixed time limit.

41.–

The Patent Office shall, during the proceedings referred to in para 40.1), accept the communication of the correspondence relating to the international application by means of teleprinter, provided that within 14 days after being so communicated, the original copy of the letter so communicated is furnished to the Patent Office together with the accompanying letter which states the fact of its earlier communication by the means as mentioned above.

42.–

The international application, the processing of which the Patent Office has initiated as a designated or elected office, shall be accorded the number of a serial national application.

43.–

If the Patent Office does not receive, from the International Bureau, a copy of the priority document, it shall invite the applicant to furnish that document within the fixed time limit.

## **CHAPTER 8**

### **GRANT OF PROTECTION**

44.–

The Patent Office shall, after having checked that the due renewal fee has been paid in due time, enter in the Register the mention of the grant of a patent and shall publish the patent specification.

45.–

The Patent Office shall invite the applicant or patentee to pay, within the prescribed time limit, a fee for the publication of the patent specification. After the fee is paid, the Patent Office shall issue a letters patent the patentee.

46.–

The provisions of paragraphs 44 and 45 shall apply accordingly to rights of protection for utility models.

## **CHAPTER 9**

### **REGISTERS**

47.–

- 1) The Patent Register kept by the Patent Office shall consist of the accessible part and the non-accessible part. In the accessible part, entries concerning patents for non-secret inventions shall be made and in the non-accessible part – entries concerning patents for secret inventions.
- 2) The accessible part and non-accessible part of the Patent Register shall be kept in two separate register books.
- 3) The manner of keeping the register books is described in paragraphs 8 and 9 of the Annex to this Ordinance.

48.–

The patent, of which the mention of grant is entered in the Patent Register, shall be accorded a serial registration number.

49.–

- 1) The entry in the Patent Register shall, at the request of the interested person, be made on the basis of a decision on entry.
  - 2) The Patent Office shall check whether the documents which are to be the basis for taking a decision on entry in the Patent Register, comply with the provisions in force.
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50.–

Correction of an obvious mistake in the Register shall be made on a basis of a determination. The determination on the correction shall be subject to a complaint.

51.–

- 1) When making an entry in the Register, the basis for the entry shall be indicated.
- 2) Individual entries made in a given column shall be accorded serial numbers and shall be separated with level lines.
- 3) Changes and deletions in the entries shall be marked with new subsequent numbers in the same columns, in which the changed or deleted entries have been made.
- 4) Original entries to which changes or deletions relate, shall be underlined with a red line.
- 5) Misprints and other obvious mistakes in entries shall be crossed out with a line in a manner which should enable the clear reading of the original text, and a new correct entry shall be made in the same column.
- 6) A person making an entry shall mark a date of the entry and shall set his or her signature.

52.–

In the event, where the Minister for National Defense or the Minister for the Interior finds that a secret invention lacks the nature of the secret invention, the Patent Office shall make an entry relating to the patent for that invention in the accessible part of the Patent Register under a serial registration number and shall mention that fact in the non-accessible part of the Register on a page on which the indications concerning that patent appear.

53.–

The Patent Office shall communicate of the entries made in the accessible part of the Register in the official gazette “Wiadomosci Urzedu Patentowego”, unless the contents of the entry has been otherwise communicated.

54.–

- 1) Any entry in the accessible part of the Patent Register may be inspected by any person; the non-accessible part of the Patent Register may only be inspected by a person authorized by the Minister for National Defense or the Minister for the Interior, within the limits of the authorization.
- 2) The Patent Register shall be accessible for public inspection in the Registers Section at the Patent Office.

55.–

- 1) The Patent Office shall, at the written request of any person and after paying a due fee by that person, issue from the accessible part of the Register:
    - i) a copy of the particulars from the Register,
    - ii) an extract from the Register,
    - iii) a certificate of the entry.
  - 2) A copy of the particulars from the Register shall include any updated indications entered in the Register, which relate to a given patent. On demand, any entries changed or deleted shall also be included in the copy of the particulars from the Register.
  - 3) An extract from the Register shall include the indications, the ascertainment of which a requesting person demands.
  - 4) A certificate of the entry shall include the ascertainment of the existence of a given entry and of the basis on which it has been made, the indication of the Register, of the part of the Register, the registration number and the number of a page of the register book.
  - 5) Vacant columns and their parts in copies or extracts from the Register shall be crossed out.
  - 6) The documents specified in sections 2)–4) shall be sealed with the round seal of the Patent Office.
  - 7) The issuance of the documents specified in sections 2)–4) shall be mentioned on the request, with the indication of the date of issuance.
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56.–

The provisions of paragraphs 47–55 shall apply accordingly to the Utility Models Register.

## **CHAPTER 10**

### **INFORMATION ON THE APPLICATION AND AVAILABILITY OF THE FILES FOR INSPECTION**

57.–

1) The Patent Office shall give information on the patent or utility model application to, and make the files of the patent or utility model application available for inspection in each phase of the proceedings, by:

- i) the applicant and his agent,
- ii) prosecution agencies, authorities of the administration of justice and their representatives,
- iii) third parties, with the consent of the applicant given in writing.

2) Giving information on the patent or utility model application prior to its publication, except in the case referred to in section 1(i), and making the files of the patent application available, shall be annotated in the files of the patent application.

3) In the cases referred to in Article 33, the Patent Office may, during the proceedings preceding the publication of the patent or utility model application, make the information on filing the patent or utility model application available to third parties and disclose the file number, the filing date, the title of the application and the applicant's name.

58.–

1) The third parties may, as from the day of publication of the patent or utility model application, inspect the specification of the patent or utility model application, including the description, the claims and the drawings as well as make copies of these documents and receive facsimiles of the specification of the application, against payment.

2) The Patent Office may, at the request of the persons who can evidence their legal interest, make available for inspection documents contained in the files, other than those specified in section 1). The provision of para 57.2) shall apply accordingly.

59.–

The provisions of paragraphs 57 and 58 shall not apply to secret inventions and secret utility models.

## **CHAPTER 11**

### **TRANSITIONAL AND FINAL PROVISIONS**

60.–

Upon the date of entry of this Ordinance into force, the former provisions shall apply to the proceedings concerning:

- i) the issuance of a certificate of authorship, unless the decision on the grant of a patent or a right of protection has been taken before the date at which the Law becomes effective,
- ii) carrying out the substantive examination of the invention or utility model for which a provisional patent or a provisional patent of addition or a right of protection has been granted, before the date at which the Law becomes effective.



61.–

The Ordinance of the President of the Patent Office of the People's Republic of Poland of November 12, 1984 on the protection of inventions and utility models (Monitor Polski No 26 item 179) is repealed.

62.–

The Ordinance becomes effective on April 16, 1993.

## **Annex to the Ordinance of the President of the Patent Office of the Republic of Poland of March 23, 1993 (item 179)**

### **REQUIREMENTS CONCERNING THE PATENT APPLICATION, UTILITY MODEL APPLICATION AND REGISTERS**

#### *I. Requirements concerning the documents attached to the patent and utility model application*

1.–

1) The document of priority of the application filed abroad shall consist of:

- i) a copy or facsimile of the application filed abroad, authenticated by the competent foreign authority with which the application was filed,
- ii) a certificate issued by the competent foreign authority referred to in point (i), indicating the filing date of the application.

2) The document of priority of the display of the invention or utility model at the exhibition shall consist of:

- i) a certificate issued by the director of the exhibition, which confirms the display of the invention or utility model at the exhibition; the certificate shall indicate the name of the exhibitor, the name of the exhibition, the date and place of the exhibition and shall confirm the identity of the displayed product with the attached description and drawings of that product,
- ii) the description and the drawings of the displayed product, which disclose its main technical features and are certified by the director of the exhibition in a manner which leaves no room for any doubts as to the authenticity of the contents of those documents,
- iii) if the exhibition takes place abroad – a document certifying that the exhibition is of the kind as indicated in para 15 of the Ordinance.

2.–

The declaration on priority dates shall include:

- i) the name of the applicant,
  - ii) the title of the invention or of the utility model,
  - iii) the number of the application filed with the Patent Office, if it is known to the applicant,
  - iv) the declaration on claiming priority by the applicant,
  - v) specification of numbers of claims together with the priority dates corresponding to the separate claims; by each individual date, the name of the country in which respective application was filed, as well as the application number or the name, location and country of the exhibition shall be placed; it is to be understood that to the claims which have not been mentioned, the priority date of the application filed with the Patent Office shall correspond,
  - vi) the signature of the applicant or his agent and the date.
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3.–

The declaration of the applicant on enjoying the right of priority, shall include:

- i) the name of a person, on behalf of which the priority document has been issued,
- ii) the name of the applicant,
- iii) the title of the invention or of the utility model, as well as the country, the date and the number of filing or the identification of the exhibition,
- iv) the statements of the grounds for enjoying the right of priority,
- v) the signature of the applicant or his agent and the date.

4.–

The certificate of the deposit of microorganism shall include:

- i) the name of a depository institution, with which the deposit was made,
- ii) the name of the depositor,
- iii) the date of deposit of microorganism,
- iv) the date of receipt, accorded to the deposit by the depository institution.

5.–

The power of attorney shall contain:

- i) the name and address of the applicant,
- ii) the name and address of the agent,
- iii) the declaration of the applicant, authorizing the agent to act in his name,
- iv) the identification of the case to which the power of attorney relates,
- v) the scope of the power of attorney,
- vi) the signature of the applicant and the date.

6.–

1) If the documents specified in para 1.2) and paragraphs 2–5 of the Annex to the Ordinance, and the evidences referred to in para 26 of the Ordinance, have been drawn up in a language other than the Polish, they shall be accompanied by the translations into the Polish language, signed by a translator and certified by the applicant or his agent. The documents and their translations shall be so connected as to guarantee that both are identical as to the content.

2) If the document, referred to in para 1.1) of the Annex to the Ordinance, has been drawn up in a language other than the Polish, English, French, German or Russian, it shall be accompanied by the translation into one of those languages. The provision of section 1) shall apply accordingly.

## *II. Physical requirements concerning the patent or utility model application*

7.–

1) All elements of the application (the description, the claims, the drawings and the abstract) shall be so presented as to admit of direct reproduction.

2) No sheet shall be folded. Each sheet shall be free from creases, cracks and erasures, and shall be free from alterations, overwriting and interlineations. Non compliance with this rule may be authorized if the authenticity of the content is not in question and the requirements for good reproduction are not in jeopardy.

3) Only one side of each sheet shall be used.

4) Each sheet shall be used in an upright position, i.e. the short sides at the top and bottom.

5) All elements of the application shall be on paper which shall be flexible, strong, white, smooth, matt, non-transparent and durable. However, one carbon copy of the description and one carbon copy of the claims, as well as the drawings prepared on non-crackable drafting paper, shall be acceptable.

6) Each element of the application shall commence on a new sheet.

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- 7) If an element of the application consists of two or more sheets, the sheets shall be so connected that they can be easily turned when consulted.
  - 8) The size of the sheets shall be A4 (297 mm x 210 mm).
  - 9) The minimum margins of the sheets containing the request, the description, the claims and the abstract shall be as follows: the top margin on the first sheet, except for the request – 80 mm, the top margin of other sheets – 20 mm, the left – 35 mm, the right – 20 mm, the bottom – 20 mm.
  - 10) The minimum margins of the sheets containing the drawings shall be as follows: top – 25 mm, left – 35 mm, right – 15 mm, bottom – 10 mm.
  - 11) The sheets shall not contain frames or single lines separating any of the margins from the usable surface of the sheet.
  - 12) The margins of the sheets shall be blank.
  - 13) If an element of the application consists of two or more sheets, the sheets shall be numerated in consecutive Arabic numerals. Each element of the application shall have a separate numeration; the numbers shall be placed at the top of the sheet, in the middle, below the top margin.
  - 14) It is recommended to number every fifth line of each sheet of the description; the numbers of the lines (5, 10, 15, etc.) shall appear on the left side of the sheet, to the right of the margin.
  - 15) The request, the description, the claims and the abstract shall be typed or printed.
  - 16) The typing shall be ca 6 mm – spaced.
  - 17) Only mathematical and chemical formulae and rare characters, symbols and letters in the Greek language may, when necessary, be written by hand.
  - 18) All text matter shall be executed in a dark, indelible color and shall be in characters, the capital letters of which are not less than 2,1 mm high.
  - 19) The request, the description, the claims and the abstract shall not contain drawings.
  - 20) The description, the claims and the abstract may contain mathematical or chemical formulae, excluding structural chemical formulae.
  - 21) The description and the abstract may contain tables; any claim may contain tables only if the subject matter of the claim makes the use of tables indispensable.
  - 22) The drawings shall not contain text matter, except a single word or words, when absolutely indispensable, such as “water”, “steam”, “open”, “closed”, “section on AB”. Also a few short catchwords in flow sheet and block schematic diagrams, indispensable for understanding of the scheme, shall be acceptable.
  - 23) Drawings shall be executed in precise, durable, black, sufficiently dense and dark, uniformly thick and well defined lines and shall be such that a photographic reproduction with a linear reduction in size to two–third would enable all details to be distinguished without difficulty. Colorings and gratings shall not be acceptable.
  - 24) Cross–sections shall be indicated by oblique hatching which should not impede the clear reading of the reference signs and leading lines.
  - 25) All numbers, letters and reference lines appearing on the drawings, shall be clear and well–marked. Brackets, circles or inverted commas shall not be used in association with numbers and letters.
  - 26) Each element of each figure of the drawings shall be in proper proportion to each of the other elements in the figure, except where the use of a different proportion is indispensable for the clarity of the figure.
  - 27) The height of the numbers and letters in the drawings shall not be less than 6 mm.
  - 28) The same sheet of drawings may contain several figures but clearly separated from one another. It is recommended to arrange the figures in an upright position. The different figures shall be numbered in consecutive Arabic numerals.
  - 29) Reference signs not mentioned in the description shall not appear in the drawings, and vice versa – reference signs not appearing in the drawings shall not be placed in the description. The same features, when denoted by reference signs, shall, throughout the application, be denoted by the same sign.
  - 30) Reference signs appearing in the description shall be underlined.
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31) If the drawings contain a large number of reference signs, it is recommended to attach a separate sheet listing all reference signs and the features denoted by them (list of reference signs).

32) The provisions of sections 24)–26) and 29)–31) shall not apply to structural chemical formulae.

### *III. Requirements concerning the Patent Register.*

8.–

The pages of the Register book shall be numerated in consecutive numerals and shall be laced up. End–pieces of the string shall be attached to the inner side of the cover of the register book and seals with the round seal of the Patent Office with the sealing–wax. The last page of the book shall contain a note indicating the number of pages in the register book. The note shall be signed by an authorized person and dated.

9.–

1) Each page of the register book shall be for entries relating to one patent only. If one page is not enough for the entries relating to one patent, subsequent entries shall be made on another indicated page. The heading of the page shall contain:

- i) the number and a kind of the patent (patent, patent of addition),
- ii) the filing date of the invention,
- iii) the number and the filing date of the main patent (in respect of a patent of addition),
- iv) the file number of the invention,
- v) the number of the parent application (under which the application has been published),
- vi) the priority (date, country code, number),
- vii) the date of publication of the patent application,
- viii) the designation of a class, sub–class, group and sub–group,
- ix) the date of grant of the patent (the date of the decision),
- x) the number and the year of publication of the “Wiadomosci Urzedu Patentowego” in which the mention of the grant of a patent is published.

2) A page of the register book shall contain six columns marked with letters from A to F for the following entries:

- A the name and the place of residence or place of business of the patentee (location, country),
  - B the title of the invention,
  - C the name of the inventor and his place of residence (location, country),
  - D rights which restrict the patent (licence, right to work the invention, declaration on the open licence),
  - E the entries updating the legal status of the patent (patents of addition, conversion of a patent of addition into an independent patent),
  - F the date of revocation of the patent or the date and the grounds of the termination of the patent.
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