

REGULATION
of the Council of Ministers of April 28, 1993
on the litigation and appeal procedures
and on fees relating to the protection
of inventions and utility models

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By virtue of Articles 115(2) and 120 of the Law of October 19, 1972 on Inventive Activity (O.J. 1993 No 26, item 117), Article 4(8) of the Law of October 30, 1992 on the amendment of the Law on Inventive Activity and the Law on the Patent Office of the Republic of Poland (O.J. 1993 No 4, item 14) and Article 104(3) of the Labour Code, the following rules shall be observed:

Chapter 1
General provisions

1.—

Any reference in this Regulation to:

- 1) the Law – shall mean the Law of October 19, 1972 on Inventive Activity (O.J. 1993 No 26, item 117)
- 2) the Patent Office – shall mean the Patent Office of the Republic of Poland
- 3) average salary – shall mean the salary as published by the President of the Central Statistics Office in accordance with the provisions on old-age pension

Chapter 2
Litigation procedure before the Patent Office

2.—

- (1). An action for the institution of the proceedings shall be filed in writing and contain the designation of the parties concerned, their addresses, brief presentation of the case and explicitly formulated claim, presentation of evidence as well as the signature and the date.
- (2). The action referred to in subsection (1) shall be accompanied by:
 - i) where the action is filed by a representative – a power of attorney,

- ii) copies of the action and of the documents enclosed, in a number of copies equivalent to the number of parties involved,
 - iii) receipt for the payment of a due fee.
- (3) The Patent Office shall check the action referred to in subsection (1) as to the compliance with formal requirements. In case, where the failure to comply with these requirements or to furnish the documents referred to in subsection (2) has been ascertained, the Patent Office shall invite the party to make up, within the fixed time limit, the deficiencies and faults found, under the pain of the discontinuance of the proceedings.
- 3.–
- (1). Where the action complies with formal requirements, the Patent Office shall serve copies of the action and of the documents enclosed thereto upon another party and set at least 30-day time limit for giving a written reply, if necessary.
 - (2). The party invited to give reply to the action shall enclose its copies in a number equivalent to the number of parties to the proceedings.
 - (3). After the receipt of the reply to the action or after the expiry of the time limit set for forwarding thereof, the Patent Office shall appoint a hearing and notify the parties concerned and their representatives about it, when at the same time serving a copy of the reply to the action upon them.
 - (4). Notice of hearing should be served upon the parties at least 7 days before the hearing.
- 4.–
- (1). When applying the litigation procedure, the Patent Office shall hear cases in of three-person adjudicative boards, the composition of which shall be determined by the President of the Patent Office.
 - (2). An adjudicative board shall be composed of a judge from a district court as presiding judge, an appointed member of the Patent Office's staff and a representative of one of the organisations referred to in Article 9 of the Law, appointed from a list of representatives, communicated to the President of the Patent Office by these organisations.
 - (3) The provisions of subsections (1) and (2) shall not apply to preparatory proceedings to the extent as specified in sections 2 and 3.
- 5.–
- (1) Members of adjudicative boards shall be under an obligation to keep secret any information taken when performing their duties outside the open hearing.
 - (2) Members of adjudicative boards shall, when deciding in cases, be independent and disciplined only by the law.
- 6.–
- (1). Hearings before the Patent Office shall be open. In the event, where a case falling within the scope of the State defense or security is to be heard, the hearing in camera shall be ordered by the presiding judge of the adjudicative board. The presiding judge of the board may also order the hearing in camera for other important reasons.
 - (2) The Patent Office may summon and hear witnesses and seek experts' opinion. The Patent Office may also request a territorially competent cut to hear witnesses and get an expert's opinion.
 - (3) The Patent Office shall award fees to the experts referred to in subsection (2), according to the provisions regulating the matter of costs of producing expert evidence in course of legal proceedings.
 - (4) Evidence shall be taken at the hearing, the Patent Office may, however, order to have evidence taken, in whole or partially, by one or more members of the adjudicative board. The date of taking evidence shall be communicated to the parties or their representatives.
 - (5) A recording clerk shall, being instructed by the presiding judge of the board, record the minutes of the session, which shall be signed by the presiding judge and recording clerk.

- (6) The minutes should contain:
 - i) indication of the adjudicative body, place and date of the session, names of the members of the adjudicative board, of the recording clerk, of the parties and their representatives, as well as designation of the case and a mention as to the hearing in camera,
 - ii) record of the session, in particular motions and statements of the parties, results of the hearing of evidence, indication of the orders and decisions made during the session and ascertainment as to the pronouncement thereof; instead of mentioning the orders and statements made by the parties, the minutes may refer to writings preparatory to pleading,
 - iii) acts of the parties, having the influence on the decision of the Patent Office (agreement, abandonment of the claim, admission, withdrawal, change, extension or limitation of the action).
- (7) The parties may demand the minutes to be corrected or supplemented, not later, however, than during the next session, and where the decision has been taken – until the day on which a time limit for lodging an appeal expires. The decision concerning the refusal to make corrections or supplements to the minutes may be subject to a complaint.

7.–

- (1) Where the Patent Office finds itself not to be competent for the investigation of the action, it shall transfer a case to a competent authority. This decision may be subject to a complaint.
- (2) In case, where the appellant withdraws the action before the hearing, the Patent Office shall decide on the discontinuance of legal proceedings.
- (3) The cases referred to in subsections (1) and (2), in section 2(3), section 6(2)–(4) and (7), section 10 as well as questions of the stay of proceedings may also be decided, by the Patent Office, at sittings in camera.

8.–

- (1). The Patent Office shall decide the case by rendering a decision after the hearing, unless otherwise is stipulated by special provisions.
- (2). The decision referred to in subsection (1) is taken by simple majority of votes.
- (3). The member of the board who is in disagreement with the opinion of the majority, shall be allowed to give his dissenting opinion together with its reasoning.
- (4). The decision shall contain: indication of the adjudicative body, date of the session and of rendering the decision, names of the members of the adjudicative board and the recording clerk, naming of the parties, designation of the case and its settlement, as well as the decision as to the costs of the proceedings, reference to the legal ground and signatures of the members of the board.
- (5). The presiding judge of the adjudicative board shall, immediately after the hearing, pronounce the decision in public together with its reasoning in brief and give direction to the parties as to the right of appeal to the Board of Appeals with the Patent Office, vested in them, when indicating, at the same time, a time limit and the procedure prescribed for lodging an appeal.
- (6). Where the pronouncement of the decision is not possible immediately after the hearing, the adjudicative board shall be allowed to adjourn the pronouncement of the decision for a period up to two weeks, which shall be subject to a notice given by the presiding judge of the board, together with the communication as to the day of the pronouncement of the decision.
- (7). The decision referred to in subsection (1) shall, within four weeks, be reasoned, ex officio, in writing; the reasoning shall be signed by the presiding judge of the board and the member of the board who has prepared the reasoning. A copy of the decision together with the reasoning shall be served upon the parties.

9.–

The organisation, an employee of which is a member of an adjudicative board, shall be obliged to provide full-pay leave for him for a period of his servicing as member of the adjudicative board.

10.–

- (1). The party whose claim has been admitted, shall be entitled to have all necessary costs of the proceedings refunded, provided that not later than before the closing of the hearing it submits a request to this effect, excluding the costs arising from his careless and apparently improper action or delayed submission of evidences. The Patent Office shall render a decision as to the refund of the costs of the proceedings to one party by the adverse party.
- (2). The provision of subsection (1) shall not apply, where the adverse party has not provoked the action for the institution of the proceedings or its reaction to this action has been the admission of the claim raised therein.
- (3). In the event, where the proceedings is discontinued by reason of the withdrawal by a party of the action before the hearing, the Patent Office shall decide on the refunding of the party with a half of the fee; in such case, other costs of the proceedings shall be borne by the party.
- (4). The Patent Office shall be allowed to require the appellant or the party requesting the action which give rise to costs, to make an advance payment, in prescribed amount, on account of the costs of proceedings, under the pain of leaving the action without cognizance or non-performance of the act as requested.
- (5). Where the appellant is a person having his domicile or its seat abroad and lacking real estate in the country, the Patent Office may, at the adverse party's request, to impose an obligation on the appellant to give a deposit on securing the costs of the proceedings, under the pain of leaving the action without cognizance.
- (6). In any matters relating to the costs of proceedings which are not regulated by the provisions of subsections (1)–(5), the provisions of the Code of civil procedure shall apply accordingly.
- (7). In any matters which are not regulated by the provisions of sections 1–8, the provisions of the Code of administrative procedure shall apply accordingly.

Chapter 3 **Appeal proceedings**

12.–

- (1). The Board of Appeals with the Patent Office, hereinafter referred to as “Board of Appeals” is hereby established. The seat of the Board of Appeals is the capital city Warsaw.
- (2). The Board of Appeals is composed of the presiding judge and his deputies designated from among the judges of the Supreme Court by the First President of this Court, and of members appointed, on a proposal of the President of the Patent Office, by the presiding judge of the Board of Appeals.
- (3). Members of the Board of Appeals, referred to in subsection (2) shall be appointed from among the employees of the Patent Office and from among representatives of the organisations referred to in Article 9 of the Law, entered in the list of representatives submitted by these organisations to the President of the Patent Office.
- (4). Members of adjudicative boards of the Board of Appeals shall, when deciding in cases, be independent and exclusively disciplined by the law.
- (5). The Board of Appeals shall be supervised by the Prime Minister of the Council of Ministers. The supervision may not encroach on the domain in which members of the Board of Appeals are recognized to be independent.

13.–

- (1). The Board of Appeals shall decide cases at hearings and shall be composed of a judge of the Supreme Court acting as presiding judge, a representative of the Patent Office and a representative of one of the organisations referred to in Article 9 of the Law, appointed to be members of the adjudicative board by the presiding judge of the Board of Appeals from among its members.
- (2). In the event of the complexity of a case, the presiding judge of the Board of Appeals may order the appeal to be decided by the board enlarged up to five members.

(3). The provisions of subsections (1) and (2) shall not apply to the preparatory proceedings to the extent as determined in sections 2 and 3, accordingly.

14.–

- (1). Time limit for lodging an appeal against a decision shall be two months of the day on which the contested decision is served upon a party and for lodging a complaint against an order shall be one month of that day.
- (2). The Board of Appeals shall, at a sitting in camera, decide on the rejection of the appeal or complaint on the ground of the overrunning of the time limit and where no justification exists for its reinstatement.

15.–

- (1). Subject to the provisions of Article 15(1) and Article 79(1) of the Law, the Board of Appeals shall render a decision in which it maintains the contested decision, reverses it in whole or partially and renders a new decision to this extent, or reverses the decision and remands the case to the Patent Office.
- (2). When reexamining the case, the Patent Office shall be bound by the legal appraisal and recommendations as to the continuation of the proceedings, contained in the decision of the Board of Appeals.
- (3). The provisions of subsections (1) and (2) shall apply, mutatis mutandis, when complaints against orders are decided.

16.–

- (1). The presiding judge of the Board of Appeals shall receive, for presiding at the sessions of the Board of Appeals and the participation in the work of adjudicative boards, lump-sum remuneration amounted to 50% of the average salary.
- (2). The presiding judge shall be entitled to receive remuneration for the participation in the work of and adjudicative board of the Board of Appeals, in the amount of:
 - i) for each case concluded after the hearing 2%
 - ii) for each suspended session and each case decided at the sitting in camera 1%of the average salary.
- (3). A member of an adjudicative board, who remains unemployed, shall receive remuneration for the participation in the work of the adjudicative board of the Board of Appeals, in the amount equal to 50% of the remuneration determined in subsection (2).
- (4). A member of an adjudicative board of the Board of Appeals shall, for the preparation in writing of the reasoning of the decision rendered by the Board of Appeals, receive remuneration amounted to 2% of the average salary.
- (5). For the assessment of the remuneration referred to in subsections (1)–(4), the average salary, calculated as from the first day of the month following the day of its announcement, shall be taken into account.
- (6). The remuneration referred to in subsections (1)–(4) shall be rounded upwards to 1000 PLZ.

17.–

Any incomes and expenditures connected with the activity of the Board of Appeals shall constitute incomes and expenditures of the State budget in the part relating to the Patent Office.

18.–

The provisions of sections 2 and 3, 5(1) and from 6 to 11 shall apply to appeal procedure, accordingly.

Chapter 4

Fees relating to the protection of inventions and utility models

19.–

- (1). The protection of inventions and utility models shall be subject to single fees and periodic fees. The fees shall constitute the income of the State budget.
- (2). State organizational units, incomes from the protection of inventions and utility models of which constitute, according to the principles of their financial activity, incomes of the State budget, shall be exempted from periodic fees relating to the protection of inventions and utility models.
- (3). Schedule of fees relating to the protection of inventions and utility models is annexed to this Regulation.

20.–

- (1). Single fees for applications, requests, appeals, complaints and other actions, shall be paid in advance.
- (2). A single fee for filing a patent or utility model application may also be paid within one month as of the day on which an invitation from the Patent Office for the payment of this fee is served upon the applicant. In case of the failure to pay the fee in due time, the application shall be deemed withdrawn and the proceedings discontinued.
- (3). In case, where a decision or an order of the Patent Office has been reversed as a result of the appeal or complaint lodged, the fee paid for the appeal or complaint shall be subject to refund.
- (4). The provision of subsection (3) above shall not apply to a fee for the appeal or complaint against a decision of the Patent Office taken when applying the litigation procedure.

21.–

- (1). A periodic fee for the first period of patent protection or 5-year-period of utility model protection shall be paid within three months as of the date at which a decision of the Patent Office on the grant of a patent or right of protection for a utility model, issued against the payment of the fee, has been served upon the applicant. The applicant may, at the same time, pay a fee for subsequent commenced periods of patent protection or a fee required for the renewal of a utility model protection for the periods commenced before that date.
- (2). Subject to the provisions of subsection (1) above, fees for subsequent periods of patent protection or utility model protection shall be paid in advance, not later than on the day upon which the preceding protection period expires.
- (3). The fees referred to in subsection (2) may also be paid within six months after the expiration of the term of payment, provided that the fees shall be subject to increase by 30%. This provision shall not apply to the payment of the fee for the second utility model protection period.
- (4). Periodic fees referred to in subsection (2) may also be paid within one year before the term of payment. The fees shall be subject to refund in the event of the revocation or termination of the patent or utility model protection before the term of their payment. The fees for the past periods and for a running period shall not be subject to refund.
- (5). Where a patent of addition or a right of protection of addition are granted, lump-sum fee shall be paid for the protection of the invention or utility model being the subject matter of that patent or right of protection.
- (6). Where a patent of addition or a right of protection of addition becomes an independent patent or independent right of protection, periodic fees shall be paid for the protection of this invention or utility model, starting from the period following the termination of the main patent or main right of protection, in the amount which would be due for this and subsequent periods of protection of the invention being the subject matter of the main patent or of the utility model being the subject matter of the main right of protection.
- (7). Subject to subsection (10) below, the time limit for the payment of a fee referred to in subsection (1) and section 20(2), may be reinstated at the applicant's request, if within two months as of the day on

which the reason of the failure to meet the time limit has ceased to exist, not later, however, than within one year as of the day on which this time limit has expired, the applicant is able to prove that, in all probability, the failure to meet the time limit was without fault on his part. At the same time as filing his request, the applicant should pay the overdue fee.

- (8). The time limit for the payment of a fee referred to in subsection(3) may, at the patentee's or holder's of the right of protection request, be reinstated, if within two months as of the day on which the reason of the failure to meet the time limit has ceased to exist, not later, however, than within six months of the day, on which this time limit has expired, the applicant is able to prove that, in all probability, the failure to meet the time limit was without fault on his part. At the same time as filing his request, the patentee or the holder of the right of protection should pay the overdue fee, referred to in subsection(3). The time limit may not be reinstated before the expiration of two months of the publication, at the official gazette "Wiadomosci Urzedu Patentowego", of the decision on the termination of the patent or the right of protection for a utility model.
- (9). The reinstatement of a time limit for the submission of the request referred to in subsections (7) and (8) shall not be admitted.
- (10). Where a decision, which declares the decision on the grant of a patent or a right of protection lapsed on the ground of the failure to pay the fee referred to in subsection (1), or a decision, which deems the application withdrawn and makes the proceedings discontinued on the ground of the failure to pay the fee referred to in section 20(2), has been taken, the applicant shall be entitled to appeal against this decision, provided that he is able to prove that, in all probability, the failure to pay was without fault on his part and, at the same time, he pays the overdue fee.

22.–

- (1). The applicant who proves that he is not able to pay a fee for filing a patent or utility model application in total amount, shall be exempted from this fee in part. The remaining part of the fee may not, however, be less than 30% of the due fee.
- (2). The applicant requesting the exemption shall be exempted, in whole or partially, when complying with the condition referred to in subsection (1), from a fee for a request for rendering a decision in litigation proceedings, fee for lodging an appeal or complaint, fee for the publication of a patent specification or utility model specification, as well as from periodic fees for patent protection or utility model protection.
- (3). Where the applicant's request is motivated by financial reasons, time limits for the payment of the fees referred to in section 21(1) and (5) shall be deferred up to six months.
- (4). In the matters specified in subsections (1)–(3), the Patent Office shall issue orders. The orders shall be subject to complaint.
- (5). Complaints against the orders referred to in subsection (4) shall be exempted from single fees.

23.–

- (1). The fees provided for in this Regulation shall be paid, on the Patent Office's account, in cash, by bank transfer or post remittance.
- (2). Fees due for different acts shall be paid separately.

Chapter 5

Transitional and final provisions

24.–

The provisions of this Regulation shall apply to:

- i) single fees for applications, requests, appeals, complaints and other actions performed after the date of its entry into force, unless a fee has been paid before that date,
- ii) single fees for requests for granting the transitional protection for foodstuffs, pharmaceuticals and chemical compounds, submitted before the entry of this Regulation into force,

- iii) periodic fees, the term of payment of which falls after the date of the entry of this Regulation into force, unless a fee has been paid earlier or its amount has been assessed in the decision on the grant of the exclusive right for working the invention or utility model, rendered before the date of the entry of this Regulation into force.

25.–

A fee for the first patent protection period and a lump-sum fee for patent protection, prescribed in this Regulation, shall be reduced by a fee for substantive examination paid earlier, provided that the patent application has not been processed before the entry into force of the Law on Inventive Activity of October 30, 1992 and the Law on the Patent Office of the Republic of Poland (O.J. No 4 of 1993, item 14).

26.–

The former provisions shall apply to legal relations in matters not governed by this Regulation, raised before the entry of this Regulation into force in respect of inventive projects.

27.–

The Regulation of the Council of Ministers of June 29, 1984 on inventive projects (O.J. No 33 of 1988, item 178; No 9 item 51, No 10 item 73 and No 43 item 338 of 1990; No 83 item 374 of 1991) is declared to be repealed.

28.–

The Regulation shall come into force at the date of its promulgation.

FEES SCHEDULE FOR THE PROTECTION OF INVENTIONS AND UTILITY MODELS

SINGLE FEES

1.	Filing fee for invention or utility model	2 000 000 PZL
2.	Each of priority claim	200 000 PZL
3.	Transmittal fee (PCT application)	1 500 000 PZL
4.	Late payment fee for designation, delayed payment of transmittal, search or basic fees (PCT application)	1 500 000 PZL
5.	National fee (for PCT application)	
	– where preliminary examination has not been carried out	2 000 000 PZL
	– where preliminary examination was carried out	1 000 000 PZL
6.	Petition for the issue by et Patent Office of a decision in litigation proceedings	500 000 PZL
7.	Lodging an appeal against a decision taken by the Patent Office	200 000 PZL
8.	Lodging a complaint against a procedural decision taken by the Patent Office	100 000 PZL
9.	Publication of a patent specification	500 000 PZL
10.	Publication of the eleventh and of each subsequent sheet of a patent specification – for one sheet	30 000 PZL



11.	Publication of a utility model specification	100 000 PZL
12.	Copy or excerpt from the register or a certificate confirming that specific data appear in the register	50 000 PZL
13.	Drawing up of the priority document	200 000 PZL

PERIODIC FEES

I. Inventions

1.	First protection period (1st to 5th year)	2 000 000 PZL
2.	Second protection period (6th to 8th year)	3 000 000 PZL
3.	Third protection period (9th to 11th year)	4 000 000 PZL
4.	Fourth protection period (12th to 13th year)	5 000 000 PZL
5.	Fifth protection period (14th and 15th year)	6 000 000 PZL
6.	Sixth protection period (16th and 17th year)	7 000 000 PZL
7.	Seventh protection period (18th and 19th year)	8 000 000 PZL
8.	Eighth protection period (20th year)	9 000 000 PZL
9.	For the protection of an invention being the subject of a patent of addition	5 000 000 PZL

II. Utility models

1.	First protection period (1st to 5th year)	1 500 000 PZL
2.	Second protection period (6th to 8th year)	2 500 000 PZL
3.	Third protection period (9th and 10th year)	3 000 000 PZL
4.	For the protection of a utility model being the subject of a right of protection of addition	3 000 000 PZL

For each commenced five years of transitional product protection in Poland	15 000 000 PZL
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