

# **INDUSTRIAL PROPERTY LAW\***

## **THE CONSOLIDATED TEXT OF THE ACT \*\***

### **Title I**

#### **General Provisions**

#### **Article 1**

1. This Law regulates:

- (i) the relationships in the field of inventions, utility models, industrial designs, trademarks, geographical indications and topographies of integrated circuits,
- (ii) the principles on which entities may accept rationalisation proposals and remunerate creators thereof;
- (iii) the responsibilities and organisation of the Patent Office of the Republic of Poland, hereinafter referred to as the “Patent Office”.

2. The provisions of this Law shall not prejudice the protection of the subject matter referred to in paragraph (1)(i), provided for in other legal acts.

#### **Article 2**

Combating of unfair competition is governed by a separate legal act.

## **Article 3**

### 1. References in this Law:

- (i) to a person shall mean any natural or legal person;
- (ii) to a foreign person shall mean a person not being a Polish national and not having a domicile or a seat, or a real and effective establishment on the territory of the Republic of Poland;
- (iii) to an entity shall mean a person, who runs for profit the activity in manufacturing, building, trading or servicing, hereinafter referred to as “business activity”;
- (iv) to an international agreement shall mean any international agreement to which the Republic of Poland is party;
- (v) to the Paris Convention shall mean the Stockholm Act of the Paris Convention for the Protection of Industrial Property of 20 March 1883 (O.J. No 9/1975, item 51);
- (vi) to invention projects shall mean inventions, utility models, industrial designs, topographies of integrated circuits and rationalisation projects.

2. The provisions of this Law in parts concerning economic entities shall also apply accordingly to persons running activities other than business activity and to organisational units that do not enjoy the status of legal person.

## **Article 4**

Where an international agreement or the provisions of European Union laws binding and directly applicable in all Member States provide for special procedures for granting protection for inventions, utility models, industrial designs, trademarks, geographical indications or topographies of integrated circuits, the provisions of this Law shall apply accordingly to the subject matter not governed by that agreement or these provisions, or falling within responsibilities of national authorities.

## **Article 5**

1. Foreign persons shall enjoy the rights under this Law on the basis of international agreements.

2. Insofar as it is not contrary to the provisions of international agreements, foreign persons may enjoy the rights on the basis of this Law on the principle of reciprocity. It is for the President of the Patent Office to ascertain, for the purpose of the procedure before the Patent Office and after having this consulted with a competent minister, whether the reciprocity conditions are satisfied.

## **Article 6**

1. The following shall be granted on the conditions as laid down in this Law: patents and supplementary protection rights for inventions, rights of protection for utility models and trademarks, as well as rights in registration for industrial designs, topographies of integrated circuits and geographical indications.

2. The Patent Office shall be responsible in the matters referred to in paragraph (1).

## **Article 7**

1. Economic entities may provide for accepting rationalisation projects on conditions laid down in regulations on rationalisation activities.

2. Any technical solution susceptible of utilisation and not being a patentable invention, a utility model, an industrial design or topography of an integrated circuit may be recognised by an economic entity as a rationalisation project within the meaning of this Law.

3. In the regulations referred to in paragraph (1), an economic entity shall at least determine, what kind of solutions and made by whom may be recognised by that entity as rationalisation projects, the manner in which reported projects are to be handled as well as the rules of remunerating the creators of the projects in question.

## **Article 8**

1. On the conditions as laid down in this Law, the creator of an invention, a utility model, an industrial design or topography of an integrated circuit shall be entitled:

(i) to obtain a patent, a right of protection or a right in registration,

(ii) to remuneration,

(iii) to be mentioned as such in specifications, registers and other documents and publications.

2. The creator of a rationalisation project accepted by an economic entity for exploitation shall be entitled to the remuneration specified in the regulations referred to in Article 7(1) effective on the report day, unless regulations subsequently promulgated are deemed more advantageous for the creator. The provisions of paragraph (1)(iii) shall apply accordingly.

3. The provisions of paragraphs (1) and (2) shall apply accordingly to the joint creator.

## **Article 9**

Representatives of social organisations whose activities include the encouragement of activities in industrial property matters may, in accordance with their statutes, provide assistance to the creators of inventive projects and act in their interest in proceedings before judicial bodies and, subject to Article 236, before the Patent Office.

## **Title II**

### **Inventions, Utility Models and**

### **Industrial Designs**

# **Part I**

## **Common Provisions**

### **Article 10**

1. Decisions on the grant of a patent for an invention or a right of protection for a utility model shall be taken after having examined by the Patent Office, to the specified extent, whether the statutory requirements for the grant of a patent or a right of protection are satisfied.

2. Decisions on the registration of an industrial design shall be taken after having checked, whether the industrial design has duly been filed with the Patent Office.

### **Article 11**

1. Subject to paragraphs (2), (3) and (5), the right to obtain a patent for an invention or a right of protection for a utility model, or a right in registration for an industrial design shall belong to the creator.

2. Where an invention, a utility model or of an industrial design has been made jointly by a number of persons, the right to obtain a patent, a right of protection or a right in registration, respectively, shall belong to them jointly.

3. Where an invention, a utility model or an industrial design has been made by a creator in the course of employment duties or in the execution of any other contract, the right referred to in paragraph (1) shall belong to the employer or the commissioner, unless otherwise agreed by the parties concerned.

4. Agreements concluded between economic entities may designate the entity to which the rights referred to in paragraph (1) shall belong where an invention, a utility

model or an industrial design has been made in connection with the execution of such agreement.

5. Where an invention, a utility model or an industrial design has been made by a creator with the assistance of an economic entity, the latter may enjoy the right to exploit the invention, the utility model or the industrial design in its own field of activity. In the agreement on the provision of assistance, the parties may stipulate that the right referred to in paragraph (1) shall belong in whole or in part to the economic entity.

## **Article 12**

1. The right to a patent for an invention, a right of protection for a utility model or a right in registration for an industrial design may be assigned or be subject to succession.

2. A contract for the transfer of the right referred to in paragraph (1) shall be in writing on pain of invalidity.

## **Article 13**

1. Subject to Articles 14 and 15, priority to obtain a patent, a right of protection or a right in registration shall be determined according to the date on which a patent application, a utility model application or an industrial design application has been filed with the Patent Office.

2. An application shall be deemed to have been filed at the date at which it has been received by the Patent Office or, subject to paragraph (4), its transmission by means of fax has effected.

3. Where an application has been transmitted by means of fax, the original copy thereof shall be required to be furnished within 30 days from the date on which the transmission was effected. The above time limit shall be non-restorable.

4. Where an application transmitted by means of fax is found illegible or lacking in identity with the original copy subsequently furnished, the date at which the original copy has been furnished in accordance with paragraph (3) shall be deemed to be the filing date.

5. The provision of paragraph (4) shall apply accordingly, where the original copy has been furnished after the expiration of the time limit referred to in paragraph (3); in that case the application transmitted by means of fax shall be deemed not to have been filed.

## **Article 14**

Priority to obtain a patent, a right of protection or a right in registration shall be granted in the Republic of Poland, on conditions laid down in relevant international agreements, according to the date on which a patent, utility model or industrial design application has originally and duly been filed in a designated country, provided that as from that date the application is filed with the Patent Office within:

- (i) 12 months, as far as inventions and utility model applications are concerned;
- (ii) 6 months as far as industrial design applications are concerned.

## **Article 15**

1. Priority to obtain a patent, a right of protection or a right in registration shall be determined, on conditions laid down in relevant international agreements, according to the date on which the invention, the utility model or the industrial design was displayed, in Poland or elsewhere in the world, at an official or officially recognised exhibition, provided that the patent, utility model or industrial design application has subsequently been filed with the Patent Office within six months of that date.

2. Priority to obtain a patent, a right of protection or a right in registration shall also be granted on the conditions laid down in paragraph (1), where the invention, the utility model or the industrial design has been displayed at a public exhibition in Poland other than that referred to in paragraph (1) above and mentioned by the President of the Patent Office in a communication in the "*Monitor Polski*" Official Gazette of the Republic of Poland.

3. The mention of an exhibition referred to in paragraph (2) may only be in respect of the event having proved reliable, in particular where it enjoys recognised fame, long-lasting tradition or it has been organised by a recognised organisation whose professional activity is to organise like exhibitions.

4. Subject to the application of the conditions referred to in paragraph (3), initiative in recognising a public exhibition in Poland as that, of which the priority referred to in paragraph (2) may be claimed, may likewise be taken by a competent minister or voivode.

## **Article 16**

Where an invention, a utility model or an industrial design, being the subject of the first duly filed application, has previously been displayed on an exhibition and since the date of display up to the filing date it has enjoyed the provisional protection provided for under the Paris Convention, the priority to obtain a patent, a right of protection or a right in registration, referred to in Article 14, as well as the start of the time limits for filing applications with the Patent Office provided therein, shall be determined according to the date at which the invention, utility model or industrial design has been displayed at the exhibition concerned.

## **Article 17**

1. The priority referred to in Articles 14 and 15 (earlier priority) may be assigned and be subject to succession.

2. A contract for the transfer of the priority referred to in paragraph (1) shall be in writing on pain of invalidity.

## **Article 18**

Where a patent, utility model or industrial design application has been made independently by at least two persons who enjoy the priorities accorded the same date,



the right to obtain a patent, a right of protection or a right in registration shall belong to each of these persons separately.

### **Article 19**

1. At the request of the applicant the Patent Office shall issue, for the purpose of claiming priority abroad, a document in confirmation of the filing of the patent, utility model or industrial design application with the Patent Office (priority document).

2. A priority document may only be issued on the basis of the application, which meets the requirements specified in the Law, requisite for it to be deemed to have been filed.

### **Article 20**

The creator of an invention, a utility model or an industrial design, entitled to obtain a patent, a right of protection or a right in registration may transfer that right free of charge or against an agreed compensation in favour of an economic entity or make the invention, the utility model or the industrial design available for exploitation by that entity.

### **Article 21**

Where an invention, a utility model or an industrial design has been made available for exploitation pursuant to Article 20, the assignment of the right to a patent, a right of protection or a right in registration shall, subject to its acceptance by the economic entity for exploitation and notifying the creator of that fact within one month from the report day, be effective from a date on which such invention, utility model or industrial design has been reported to the economic entity, unless the parties have agreed on another time limit.

### **Article 22**

1. Unless the parties agreed otherwise, the creator of an invention, a utility model or an industrial design shall be entitled to remuneration for the exploitation by an economic entity of his invention, utility model or industrial design, where such entity

enjoys the right to exploit it or the right to a patent, the right of protection or the right in registration under Article 11(3) and (5) or Article 21.

2. Where the parties have failed to agree on the amount of the remuneration, the latter shall be determined in due proportion to the profits obtained by the economic entity from the exploitation of the invention, the utility model or the industrial design, when taking into account circumstances in which the invention, the utility model or the industrial design has been made, in particular the extent to which the creator has been assisted in making the invention, the utility model or the industrial design, as well as the scope of the creator's employment duties involved in making the invention, the utility model or the industrial design.

3. Unless the agreement stipulates otherwise, the remuneration shall be paid in the total amount at the latest within two months after the expiry of one year from the date on which initial profits have been obtained from the exploitation of the invention, the utility model or the industrial design, or in instalments within two months after the expiry of each year in which the profits have been obtained, however for no longer than five years.

### **Article 23**

The remuneration for the creator of an invention, a utility model or an industrial design, determined and paid under the provisions of Article 22(2) and (3) should be increased, if the profits obtained by the entity prove to substantially exceed the profits taken as a basis for the purpose of determining the remuneration paid.

## **Part II**

### **Inventions and Patents**

#### **Chapter I**

#### **Inventions**

### **Article 24**

Patents shall be granted – regardless of the field of technology – for any inventions which are new, which involve an inventive step and which are susceptible of industrial application.

## **Article 25**

1. An invention shall be considered to be new if it does not form part of the state of the art.

2. The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, displaying or disclosure in any other way, before the date according to which priority to obtain a patent is determined.

3. The content of any patent applications or utility model applications which enjoy the earlier priority, not made available to the public, shall also be considered as comprised in the state of the art, provided that they were published in the manner as specified in this Law.

4. The provisions of paragraphs (1) to (3) shall not prevent a patent from being granted for an invention concerning a new use of a substance comprised in the state of the art or the use of such substance for the purpose of obtaining a product for a new use.

## **Article 26**

1. An invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art.

2. In deciding whether there has been an inventive step, the applications referred to in Article 25(3) shall not be taken into consideration.

## **Article 27**

An invention shall be considered as susceptible of industrial application, if by means of that invention a product may be produced or a process may be used, in a technical sense, in any kind of industry, including in agriculture.

## **Article 28**

The following in particular shall not be regarded as inventions within the meaning of Article 24:

- (i) discoveries, scientific theories and mathematical methods,
- (ii) aesthetic creations,
- (iii) schemes, rules and methods for performing mental acts, doing business or playing games,
- (iv) creations, whose incapability of exploitation may be proved under the generally accepted and recognised principles of science,
- (v) programs for computers,
- (vi) presentations of information.

## **Article 29**

1. Patents shall not be granted for:

- (i) inventions whose exploitation would be contrary to public order or morality; the exploitation shall not be deemed to be so contrary merely because it is prohibited by law,
- (ii) plant or animal varieties or essentially biological processes for the production of plants or animals; this provision does not apply to microbiological processes or the products thereof,
- (iii) methods for treatment of the human or animal body by surgery or therapy or diagnostic methods applied on human or animal bodies; this provision shall not apply to products, and in particular to substances or compositions applied in diagnostics or treatment.

2. The process for the production of plants or animals, referred to in section (1)(ii), is essentially biological if it consists entirely of natural phenomena such as crossing or selection.

### **Article 30**

A right holder may obtain a patent for an improvement or an addition to the invention, where such improvement or addition has the characteristics of an invention but cannot be applied separately (patent of addition). A patent of addition may also be obtained for a patent of addition already granted.

## **Chapter 2**

### **Filing of Patent Applications**

### **Article 31**

1. A patent application by means of which patent protection is sought shall contain:

(i) a request at least containing indications concerning the applicant, the definition of the subject-matter of the patent application and a petition for the grant of a patent or of a patent of addition,

(ii) a description of the invention disclosing its nature,

(iii) one or more claims,

(iv) an abstract.

2. The patent application, referred to in paragraph (1), shall also contain drawings when they are necessary for the understanding of the invention.

3. The patent application, which contains at least a request and parts which appear to be a description of the invention and a patent claim or claims, shall be capable of being deemed to have been filed.

4. If the Patent Office finds that in a patent application some elements, referred to in paragraph (3), are missing, it shall fix a time limit for completing the application, failing which the proceedings shall be discontinued; the date of receipt of the last missing document shall be considered to be the actual filing date.

5. If in the patent application drawings are missing, to which the applicant refers, the Patent Office shall fix a time limit for furnishing them; a date of receipt thereof shall be considered to be the actual filing date. Where the applicant fails to furnish the drawings, the reference to the drawings shall be deemed not to have been made.

## **Article 32**

Where the applicant is not the inventor, he shall be obliged to name the inventor in the request and state the grounds on which his own right to a patent is based.

## **Article 33**

1. Subject to Article 93<sup>6</sup>(1), the description referred to in Article 31(1)(ii) shall disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. In particular, the description shall contain the title of the invention designating the subject matter of the invention, specify the technical field to which the invention relates, as well as indicate the background art known to the applicant; it shall also present the invention in a detail manner, describe the figures in the drawings (if any), and indicate the way or ways of carrying out or exploiting the invention claimed using examples.

2. The patent claims referred to in Article 31(1)(iii) shall be entirely supported by the description and shall define, in a clear and concise manner, the invention claimed and the scope of the protection sought (a characterising portion of the claim) by way of indicating the technical features of the solution. Article 93<sup>6</sup>(1) shall apply accordingly.

3. Each claim shall be constructed in a clear manner and presented in a single sentence only or in an equivalent of a sentence.

4. In addition to an independent claim or independent claims, which should present the combination of the technical features of the invention or a group of inventions covered, according to Article 34, by one patent application, in one patent application a relevant number of dependent claims may be included, which are necessary to present various elaborations of the invention or to specify the features indicated in a characterising portion of the independent claim or of another dependent claim.

5. Interrelations between an independent claim and dependent claims shall be clearly reflected in the application.

6. The abstract, referred to in Article 31(1)(iv), shall contain concise and clear definition of the subject-matter and characteristic technical features of the invention, and the indication of its intended purpose, if it is not clearly implied by the subject-matter itself. Article 93<sup>6</sup>(1) shall apply accordingly.

7. The drawings, referred to in Article 31(2), shall reproduce the subject-matter of the invention, together with the description and patent claims, in a readable form and formulate it in a schematic manner with the omission of any descriptive parts, except for single words, if necessary. The application may contain a number of sheets with drawings. One sheet may contain more than one figures, however clearly separated one from another.

## **Article 34**

1. The patent application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept (unity of invention).

2. A group of inventions claimed in one and the same patent application shall be considered to fulfil the requirement of unity of invention, if a relationship among those inventions involves one or more of the same or corresponding technical features from

among those, which define the claimed inventions and a contribution which they make over the prior art.

### **Article 35**

An applicant wishing to take advantage of the priority of an earlier application shall be required to make, in a request, a declaration to that effect in a form of a statement and enclose a document in confirmation that the earlier patent application was filed in the designated country or certifying that the invention was exhibited at the indicated exhibition. The document concerned may also be furnished within three months of the filing date. In case of late furnishing of the said declaration or document, the priority claim shall be without effect.

### **Article 36**

An applicant shall be required to also attach to a patent application documents or declarations other than those specified in Articles 31, 32 and 35, if they are found necessary for supporting the statements or requests contained in the application. All the elements making up the patent application may be furnished in one copy only, except for the description, the patent claims, the drawings and the abstract, which are to be furnished in as many copies and in a form as reasonable for the purpose of the proceedings and for making the files uniform.

### **Article 37**

1. Until such time as a decision is taken on the grant of a patent, the applicant may, subject to paragraph (2), make additions and corrections to his application, provided that such additions or corrections do not extend the subject matter disclosed in the description of the invention beyond the content of the application as filed.

2. The alteration of the patent claims resulting in the extension of the scope of protection originally sought may only be made until the time of publication of the application and subject to the restriction referred to in paragraph (1) above.

### **Article 38**



During the examination of the patent application or within two months from the date on which a decision to refuse a patent becomes final, the applicant may request utility model protection. The utility model application shall be deemed to have been filed on the filing date of the original patent application.

### **Article 39**

1. Where a patent application has been filed in breach of the provision governing unity of invention, separate patent applications subsequently filed at the invitation of the Patent Office (divisional applications) shall be deemed to have been filed on the filing date of the original application.

2. Paragraph (1) shall apply accordingly, where the applicant files divisional applications without having been invited by the Patent Office to do that and even if the original application complies with the requirement of unity of invention.

### **Article 40**

An invention for which a Polish legal person or a Polish national, having his domicile on the territory of the Republic of Poland, wishes to seek patent protection in another country, may only be applied for protection in that country, when first has been applied for protection with the Patent Office.

## **Chapter 3**

### **Processing of Patent Applications**

### **Article 41**

1. Upon receipt of a patent application, the Patent Office shall accord a serial number to it, acknowledge the date of actual receipt and notify the applicant accordingly.

2. In the instances referred to in Article 13(4) and (5) and Article 31(4) and (5), the date of filing of the application shall be acknowledged by way of order.

## **Article 42**

1. As from the receipt of the patent application filed in accordance with Article 31(3)-(5) and throughout the patent granting proceedings, the Patent Office shall, subject to paragraph (2), invite the applicant, by way of orders, to complete the application or to remedy any identified omissions or serious defects within a fixed time limit, failure which shall result in discontinuance of the proceedings.

2. Where it has been established that the application was filed in breach of the provision governing unity of invention, the Patent Office shall invite the applicant to file divisional applications. Failure to receive the divisional applications by the Office within the fixed time limit shall result in recognising the original application as relating to the invention first mentioned in the claims, other inventions being considered to have been withdrawn.

## **Article 43**

1. Subject to paragraphs (2) and (3), the Patent Office shall publish the particulars of the patent application filed immediately after the expiry of eighteen months from the date of priority to obtain a patent. The applicant may, within a period of twelve months from the date of priority, request publication at an earlier date.

2. The particulars of the patent application shall not be published where:

(i) the application relates to a secret invention, or

(ii) before the publication a final decision has been taken on discontinuance of the proceedings or on refusal to grant a patent.

3. Where in the cases referred to in paragraph (2) the reasons for non-publication of the particulars of the patent application cease to exist the Patent Office shall publish the particulars of the application immediately after the proceeding has been initiated or resumed.

## **Article 44**

1. As from the date of publication, referred to in Article 43(1), third parties may inspect the application specification containing the description of the invention, the patent claims and the drawings included in the application documentation. Such parties may, within six months from the date of publication, submit to the Patent Office any observations as to the existence of grounds that may cause a patent to be denied.

2. Any amendments to the patent claims made until the time of publication shall be introduced in the specification referred to in paragraph (1), together with the indication of the date of making thereof.

## **Article 45**

1. During a period preceding the publication of the particulars of a patent application filed, the files relating to the application may not be disclosed or made available to unauthorised parties without the applicant's consent.

2. Where in the request for a patent the applicant gives his consent, the Patent Office may only make available to third parties the information on the filing of the application, while disclosing its number, the filing date, the title of the invention and the applicant's name.

3. In the course of examination of the patent application the Patent Office may, without the applicant's consent, seek opinions, as necessary. Anyone involved in the preparation and the issue of such opinions shall be bound not to disclose the data concerning the application.

## **Article 46**

1. When reasonable, the Patent Office, when having established that the statutory requirements for the grant of a patent have been satisfied, may invite the applicant to furnish, within a fixed time limit and under pain of discontinuance of the proceedings, documents and explanations relating to the application, as well as to make specified corrections or additions in the documents making up the application and to furnish drawings which, although not essential for a better understanding of the invention,

however are needed for the purpose of the proper presentation of the invention or are for other reasons necessary.

2. Paragraph (1) shall apply accordingly, where after the start of patent granting proceedings the applicant has made additions or corrections in the application documentation that are prohibited by this Law.

3. Subject to paragraph (4), the Patent Office may make corrections in the documents making up the application only to the extent as necessary to rectify obvious mistakes or language errors.

4. The Patent Office may also make corrections in the abstract other than those specified in paragraph (3).

#### **Article 47**

1. For each patent application, the particulars of which are to be published, the Patent Office shall draw up a search report containing the citations of the documents which may be taken into consideration in evaluating the invention claimed in the application.

2. Immediately after it has been drawn up, the search report referred to in paragraph (1) shall be communicated by the Patent Office to the applicant.

#### **Article 48**

The Patent Office shall, by way of order, decide on refusal to grant the earlier priority in whole or in part, if it has been found that:

- (i) the applicant is not entitled to enjoy the earlier priority right, or
- (ii) a patent application filed abroad, of which priority is claimed by the applicant, is not the first application within the meaning of Article 14, or

(iii) the exhibition, the display at which serves as a basis for claiming priority by the applicant, does not meet the requirements specified in Article 15, or

(iv) the invention applied for protection with the Patent Office or the relevant part thereof differs from the invention, to which the applicant has the right of priority, or

(v) the applicant has failed to observe the time limits prescribed for filing an application pursuant to Articles 14 and 15, or the time limit for furnishing a priority document or other documents or declarations required for the purpose of obtaining the priority right, or

(vi) the applicant has furnished a declaration of priority of an earlier application in breach of the provision of Article 35.

## **Article 49**

1. Subject to paragraph (2), if the Patent Office establishes that the statutory requirements for the grant of a patent have not been satisfied, it shall make a decision on refusal to grant a patent.

2. Before the Patent Office makes the decision referred to in paragraph (1), it shall fix a time limit, within which the applicant may comment on collected evidences and documents betraying the existence of the grounds that may cause a patent to be denied. The evidences and documents may extend beyond the list of the citations contained in the search report.

## **Article 50**

1. Subject to paragraph (2), the provisions of Article 49 shall also apply, where the statutory requirements for the grant of a patent have not been satisfied only in respect of a part of the application and the applicant refrains from reducing the scope of the protection sought.

2. Where the statutory requirements for the grant of a patent are not satisfied only in respect of some of the inventions covered by one application and the applicant refrains from reducing the scope of the protection sought, the Patent Office shall refuse to grant a patent for these inventions. On the respective decision becoming final the Patent Office shall decide on making the relevant amendments in the application specification as filed.

## **Article 51**

The Patent Office may choose to make the decision referred to in Article 49(1) before the particulars of the application are published.

## **Article 52**

1. Where the Patent Office establishes that the statutory requirements for the grant of a patent are satisfied and the time limit referred to in Article 44(1) has expired, it shall decide on the grant of a patent.

2. A patent shall be granted subject to payment of a fee for the first protection period. Failure to pay the fee within the prescribed time limit shall result in declaring by the Patent Office that the decision on the grant of the patent has lapsed.

## **Article 53**

Granted patents shall be recorded in the Patent Register.

## **Article 54**

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

2. The patent specification consisting of the description of the invention, the claims and drawings shall constitute an integral part of the letters patent. The patent specification shall be published by the Patent Office.

## **Article 55**

1. Any rectification of the patent specification may only be made to remedy obvious mistakes or misprints.

2. In its decision on rectification the Patent Office shall determine, at the same time, whether and to what extent:

(i) the patent specification is to be re-published;

(ii) the right holder should bear the cost of the republication of the specification.

3. Communication of the rectification shall be published in the official gazette “*Wiadomości Urzędu Patentowego*”.

## **Chapter 4**

### **Secret Inventions**

#### **Article 56**

1. An invention made by a Polish national may be considered to be a secret invention, if it concerns national defence or the security of the State.

2. The following, in particular, are inventions concerning national defence: new categories of weapons or military equipment and methods of combat.

3. The following, in particular, are inventions concerning the security of the State: technical means applied by civil services authorised to carrying out actions and reconnoitring operations, as well as new categories of equipment and matériel, and methods of use thereof by the said services.

#### **Article 57**

1. A secret invention shall constitute a State secret.

2. Secrecy of an invention in the field of national defence or the security of the State shall be determined, respectively, by a minister competent in national defence, a minister competent in internal affairs or by the Chief of the State Protection Office.

## **Article 58**

1. A secret invention may be applied for protection with the Patent Office only for the purpose of claiming priority to obtain a patent. Throughout the period where the invention applied for protection remains secret, the Patent Office shall refrain from processing that application.

2. Paragraph (1) shall apply accordingly, where a decision on the secrecy of the invention is issued after the receipt of the application by the Patent Office.

## **Article 59**

1. The right to a patent for a secret invention applied with the Patent Office for the purpose of claiming priority shall be transferred, against compensation, to the State Treasury represented by a minister competent in national defence, a minister competent in internal affairs or by the Chief of the State Protection Office, respectively.

2. The amount of the compensation referred to in paragraph (1) shall be determined in proportion to the market value of the invention.

3. If the parties have failed to agree on the amount and the terms of payment of the compensation referred to in paragraph (1), the said compensation determined by a minister competent in national defence, a minister competent in internal affairs or by the Chief of the State Protection Office, respectively, shall be payable yearly from the funds of the State budget in total or in instalments, however for no longer than five years.



## **Article 60**

1. A minister competent in national defence, a minister competent in internal affairs or the Chief of the State Protection Office, respectively, shall decide whether the invention has ceased to be secret. In that case, the Patent Office shall, at the request of a competent authority, initiate or resume the patent granting proceedings, provided that the 20-year period counted from the date of filing of the invention for protection has yet not expired.

2. After the period referred to in paragraph (1) has expired, applications relating to secret inventions shall be deemed not to have been filed.

## **Article 61**

The Council of Ministers shall, by way of regulation, determine the categories of inventions which fall within the sphere of national defence or the security of the State procedures applied in respect of such inventions both before ascertainment by a competent authority whether or not said inventions are secret and after deciding on their secrecy.

## **Article 62**

1. To the extent as agreed between the authorities concerned, the Patent Office shall communicate to a minister competent in national defence, a minister competent in internal affairs or to the Chief of the State Protection Office, lists of the inventions filed concerning national defence or the security of the State as well as, at the request of these authorities, the descriptions and drawings thereof. The provision of Article 45(3), second sentence, shall apply accordingly.

2. The files of the application relating to a secret invention may be made available to parties duly authorised by a minister competent in national defence, a minister competent in internal affairs or to the Chief of the State Protection Office.

## **Chapter 5**

### **Patents**

#### **Article 63**

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

2. The scope of the protection sought shall be determined by the claims contained in the patent specification. The patent specification and drawings may be used to interpret the claims.

3. The term of a patent shall be 20 years counted from the date of filing of the patent application with the Patent Office.

#### **Article 64**

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

2. In the case of new products, or where the right holder proves that he was unable through reasonable efforts to identify the process of manufacture actually used by another person, the product which may be obtained by means of the patented process shall be deemed to have been obtained by that process.

3. In the case referred to in paragraph (2), in the adduction of proof to the contrary, the legitimate interests of defendants in protecting their manufacturing and business secrets shall be taken into account.

## **Article 65**

A patent granted for an invention relating to the use of a substance comprised in the state of the art for the purpose of obtaining a product eligible for a new use, shall also cover products specifically prepared for such use by means of that invention.

## **Article 66**

1. The patent holder shall have the right to prevent any third party not having his consent from exploiting his invention for profit or for professional purposes by way of performing the acts consisting of:

(i) making, using, offering, putting on the market a product that is the subject matter of the invention, or importing the product for such purposes, or

(ii) employing a process that is the subject matter of the invention, as well as using, offering, putting on the market or importing for such purposes the product directly obtained by that process.

2. The patent holder shall have the right to authorise (license) another party to exploit his invention (license agreement).

## **Article 67**

1. The patent may be assigned or be subject to succession.

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

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

## **Article 68**

1. The patent holder or the licensee may not abuse his rights, in particular by preventing the invention from being exploited by a third party, if such exploitation is necessary for the purpose of meeting home market demands and is particularly dictated by public interest considerations, and consumers are supplied with the product in insufficient quantity or of inadequate quality, or at excessively high prices.

2. Preventing third parties from exploiting the invention within a period of three years from the date of the grant of the patent shall not be considered the abuse of rights, referred to in paragraph (1).

3. The Patent Office shall have the right to request a patent holder or a licensee to submit any explanations as to the scope of the exploitation of the invention for the purpose of establishing whether or not the patent is abused.

4. The provisions of paragraphs (1) and (2) shall not prejudice the provisions on counteracting monopolistic practices.

## **Article 69**

1. The following shall not be considered acts of infringement of a patent:

(i) the exploitation of an invention concerning means of transport or their parts or accessories, temporarily located on the territory of the Republic of Poland, or concerning articles which are in transit through its territory;

(ii) the exploitation of an invention for national purposes, to a necessary extent, without the exclusive right, where it has been found indispensable to prevent or eliminate a state of emergency relating to vital interests of the State, in particular to security or public order;

(iii) employing of an invention for search and experimental purposes, for the evaluation thereof, analysis or teaching;

(iv) the exploitation of an invention to a necessary extent, for the purpose of performing the acts as required under the provisions of law for obtaining registration or authorisation, being, due to the intended use thereof, requisite for certain products to be

allowed for putting them on the market, in particular those being pharmaceutical products;

(v) the extemporaneous preparation of a medicine in a pharmacy on a physician's prescription.

2. Depending on the circumstances involved, a decision on taking the invention for exploitation in the cases referred to in paragraph (1)(ii) shall be made by a competent minister or a Voivode and immediately communicated to the patent holder. In the decision, the scope and duration of the exploitation of the invention shall be determined.

3. The decision referred to in paragraph (2) shall be liable to complaint lodged in the administrative court.

4. The person whose invention is exploited for national purposes shall have the right to compensation payable from the State budget funds at an amount corresponding to the market value of the license.

5. Grant of the registration or the authorisation referred to in paragraph (1)(iv) shall be without prejudice to civil liability for putting on the market of a product without the patent holder's consent, where such consent is required.

## **Article 70**

1. The rights conferred by a patent shall not extend to acts concerning a product embodying the invention or manufactured by means of the invention, consisting in particular of its offering for sale or further putting on the market, if that product has been put on the market on the territory of the Republic of Poland by the patent holder or with his consent.

2. A patent shall neither be considered infringed by an act of importation into the territory of the Republic of Poland or other acts referred to in paragraph (1) in respect of a product that has earlier been put on the market on the territory of the European Economic Area by the patent holder or with his consent.

## **Article 71**

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

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

## **Article 72**

1. A joint patent holder may, without the consent of the other joint holders, exploit the invention himself and enforce his claims in the event of infringement of the patent.

2. Unless the agreement stipulates otherwise, where one of the joint holders makes profits from the exploitation of the invention, each of the other joint holders shall be entitled to receive an adequate part, proportional to his share in the patent, of one fourth of the profits so obtained after deduction of the expenses incurred.

3. Unless the contract on joint ownership of the patent stipulates otherwise, in cases not covered by paragraphs (1) and (2), the provisions of the Code of Civil Law governing joint ownership in fractional parts shall apply accordingly.

4. The provisions of paragraphs (1)-(3) shall apply accordingly to the joint right to the patent.

## **Article 73**

A patent holder may indicate, in particular by means of marking products with an appropriate sign, that his invention enjoys patent protection.

## **Article 74**

Where a patent application has been filed or a patent obtained by a person not entitled thereto, the entitled person may demand that the patent granting proceeding be discontinued or the patent granted be revoked. He may also demand that a patent be granted in his favour or that the patent already granted be transferred to him against reimbursement of the incurred costs of filing of the application or of granting the patent.

## **Article 75**

1. A person who, acting in good faith, was granted or acquired the patent subsequently transferred to the entitled person under Article 74, or, being in good faith, acquired a license and has exploited the invention for at least one year before a proceeding for the transfer of the patent has been instituted, or within that period has made substantial preparations necessary for exploiting the invention, may, subject to payment in favour of the entitled person of compensation at the amount as determined, continue to exploit that invention in his enterprise to the extent to which he had exploited it at the date of institution that proceeding.

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

## **Chapter 5**

### **Supplementary protection right**

## **Article 75<sup>1</sup>**

On the territory of the Republic of Poland supplementary protection rights shall be granted on the conditions laid down in the regulations concerning the creation in the European Union of supplementary protection certificates for medicinal products and plant protection products.

## **Article 75<sup>2</sup>**

1. The application for the grant of a supplementary protection right, hereinafter referred to as “the application”, shall be lodged with the Patent Office. The provisions of Article 13(2)-(5) shall apply accordingly.

2. The provisions of Title VI shall apply accordingly to proceedings for the grant of a supplementary protection right.

## **Article 75<sup>3</sup>**

The Patent Office shall make a decision on the grant of a supplementary protection right after having established that the requirements for its grant have been satisfied. The provisions of Articles 42 and 46 shall apply accordingly.

## **Article 75<sup>4</sup>**

1. The grant of a supplementary protection right shall be evidenced by the issue of a supplementary protection certificate. The provision of Article 73 shall apply accordingly.

2. Granted supplementary protection rights shall be recorded in the Patent Register.

## **Article 75<sup>5</sup>**

1. Where the Patent Office finds that the requirements for the grant of a supplementary protection right are not satisfied or that the application has been lodged



after the expiry of the prescribed time limit, it shall decide on the refusal to grant the supplementary protection right. The provision of Article 49(2) shall apply accordingly.

2. The term for lodging an application, referred to in paragraph (1) shall not be restorable.

3. The decision on the refusal to grant the supplementary protection right or the decision to discontinue the granting proceeding shall be recorded in the Patent Register.

### **Article 75<sup>6</sup>**

1. The Patent Office shall declare the decision on the grant of the supplementary protection right lapsed where:

(i) the basic patent has expired before the termination of the term for which it was granted, or

(ii) during the term of the basic patent the market authorisation for the product has been withdrawn or the right holder has surrendered his supplementary protection right.

2. In the cases referred to in paragraph (1), the granted supplementary protection right shall cease to be valid.

3. The Patent Office shall declare the supplementary protection right lapsed where the authorisation, referred to in paragraph (1)(ii), has been withdrawn after the expiry of the term for which the basic patent was granted.

4. The provisions of Article 90 shall apply accordingly to supplementary protection right.

### **Article 75<sup>7</sup>**

1. Any party may request that the supplementary protection right be invalidated, where:

(i) it has been granted in breach of the provisions governing the requirements for its grant, or

(ii) the basic patent has been invalidated in the part, on which the supplementary protection right has based.

2. The provision of Article 89(2) shall apply accordingly to the cases referred to in paragraph (1).

3. Where the basic patent is invalidated in whole, the granted supplementary protection right shall become invalid by virtue of law.

#### **Article 75<sup>8</sup>**

Decisions, declared lapsed, on the grant of the supplementary protection right or on the lapse of that right, or on its invalidation shall be recorded in the Patent Register.

#### **Article 75<sup>9</sup>**

1. The provisions governing licence contracts and transfer of the patent shall apply accordingly to the supplementary protection right.

2. The declaration of licenses of the right to exploit the invention, when submitted according to the provisions of Article 80, shall also be effective in respect to the supplementary protection right.

#### **Article 75<sup>10</sup>**

The Prime Minister shall, by way of regulation, determine the detailed requirements to be satisfied by an application for the grant of a supplementary protection right, the detailed rules and procedure to be applied in the course of processing

applications including, in particular, the place and the manner of publication of the mention of applications lodged, the manner of making entries in the Patent Register, as well as the information to be contained in the supplementary protection certificate. The requirements to be satisfied by applications may not be determined in such a way as to encumber the applicant with excessive and unreasonable impediments.

## **Chapter 6**

### **License Contracts**

#### **Article 76**

1. The license contract shall be in writing on pain of invalidity.
  
2. In a license contract restricted exploitation of the invention may be provided for (restricted license). Unless the license contract provides for the restricted exploitation of the invention, the licensee shall have the right to exploit the invention to the same extent as the licensor (full license).
  
3. The license shall terminate at the latest on the lapse of the patent. The parties shall be free to provide for a longer duration of the contract in respect of the provisions other than those governing the license, and in particular those involving payable services necessary for the purpose of exploiting the invention.
  
4. Unless in a license contract the exclusive exploitation of the invention in a specific manner is reserved, the grant of a license to one party shall not prevent other parties from being granted a license, as well as the patent holder from concurrent exploiting of the invention (non-exclusive license).
  
5. A licensee may grant a further license (sub-license) only with the patent holder's consent; grant of further sub-licenses shall not be permitted.

6. The license shall, at the request of the interested party, be recorded in the Patent Register. The holder of an exclusive license recorded in the Register may, to the same extent as the patent holder, enforce his claims in the event of infringement, unless the license contract stipulates otherwise.

## **Article 77**

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

## **Article 78**

Where a licensed patent is transferred, the license contract shall be binding on the successor in title.

## **Article 79**

Unless otherwise agreed between the parties, the provisions on license contracts shall apply accordingly to contracts for exploitation of an invention applied for protection with the Patent Office and for which no patent has as yet been granted, as well as to contracts for exploitation of an invention not applied for protection but being company's know-how.

## **Article 80**

1. A patent holder may submit to the Patent Office a declaration of licenses of the right to exploit the invention (open license). The declaration shall be irrevocable and non-lia-ble to change.

2. Submission of the declaration referred to in paragraph (1) shall be recorded in the Patent Register.

3. Where the declaration of open license is submitted, renewal fees due for patent protection shall be reduced by one half. The same shall also apply to a single renewal fee or a fee for first protection period, if the fee so reduced is received together with the declaration at the latest at the prescribed term.

4. An open license shall be full and non-exclusive and a royalty may not exceed 10 percent of the profits obtained by the licensee in each year of exploiting the invention, after deduction of the expenses incurred.

5. An open license shall be acquirable by way of:

(i) conclusion of a license contract, or

(ii) starting to exploit the invention without entering into, or before the conclusion of, negotiations; in that case the licensee shall be obliged to inform the licensor of that fact in writing within one month of the date of start to exploiting the invention.

6. Unless the license contract stipulates otherwise, the licensee shall pay the maximal royalty provided for in paragraph (4) within one month from the end of each calendar year in which the licensee has exploited the invention, unless a royalty in a lower amount is provided for in the licensor's declaration.

## **Article 81**

Unless otherwise stipulated in a contract for research work or in another contract of similar effect, the person carrying out the work shall be deemed to have granted a license for exploiting the inventions contained in the results thereof transferred to the commissioning party (implied license).

## **Chapter 7**

### **Compulsory license**

## **Article 82**

1. The Patent Office may grant authorisation to exploit a patented invention of another person (a compulsory license), where:

(i) it is necessary to prevent or eliminate a state of national emergency, in particular in the field of defence, public order, the protection of human life and health, as well as the protection of natural environment, or

(ii) it has been established that the patent has been abused within the meaning of Article 68, or

(iii) it has been established that the patent holder enjoying the right of priority of an earlier application (the earlier patent) prevents, by refusing to conclude a license contract, the meeting of home market demands through the exploitation of the patented invention (the dependent patent), whose exploitation would encroach upon the earlier patent; in such case, the holder of the earlier patent may demand that an authorisation be given to him for the exploitation of the invention that is the subject matter of the dependent patent (cross-license).

2. The grant of a compulsory license for the exploitation of an invention in the case referred to in paragraph (1)(iii) shall be conditional upon ascertainment that the exploitation of the invention that is the subject matter of the dependent patent, where the both inventions concern the same subject matter, involves an important technical advance of considerable economic significance. In case of an invention concerning semi-conductor technology, a compulsory license may only be granted to counteract unreasonable anti-competitive practices.

3. Where the Patent Office finds that the patent is abused within the meaning of Article 68, it may decide that a compulsory license may be applied for and shall announce this in “*Wiadomości Urzędu Patentowego*”.

4. A compulsory license may be granted, if the applying party is able to prove that it has earlier made, in good faith, efforts to obtain a license. This requirement may be waived in the case of a compulsory license to be granted for the purpose of preventing or eliminating a state of national emergency or where it is announced that a compulsory license may be applied for.

5. Where it is announced that a compulsory license may be applied for, waiver of the requirement referred to in paragraph (4) shall not be applicable in respect of

applications for the grant of a license submitted after the expiration of a period of one year counted from the date of that announcement.

6. The provision of paragraph (1)(iii) shall apply accordingly, where a plant breeder is not able to exercise his right to the protected plant variety or demands a cross-license to be granted to him by the patent holder.

### **Article 83**

The compulsory license shall be non-exclusive.

### **Article 84**

1. The person exploiting the invention under a compulsory license shall be obliged to pay a royalty to the patent holder.

2. The Patent Office shall determine the scope and duration of a compulsory license, the detailed terms and conditions of its exercise, as well as the amount, in proportion to the market value of the license, of the royalty and the manner and time limits of payment.

### **Article 85**

A compulsory license may only be transferred together with the enterprise or with that of its part, in which it is worked. A compulsory license relating to the earlier patent may only be transferred to a third party together with the dependent patent.

### **Article 86**

When reasonable in specific circumstances, the decision on the grant of a compulsory license may, at the request of the interested party, be changed, in part relating to the scope and duration of the license or to the amount of the royalty, two years after it was taken.

### **Article 87**

Compulsory licenses and cross-licenses shall, at the request of the interested party, be entered in the Patent Register.

### **Article 88**

The provisions on the grant of a compulsory license in the case referred to in Article 82(1)(iii) shall apply accordingly to a utility model, whose exploitation would encroach upon the earlier patent.

## **Chapter 8**

### **Invalidation and Lapse of the Patent**

#### **Article 89**

1. A patent may be declared invalid in whole or in part at the request of any person having a legitimate interest therein, who is able to prove that the statutory requirements for the grant of a patent have not been satisfied.

2. The General Prosecutor of the Republic of Poland or the President of the Patent Office may, in the public interest, request that a patent be invalidated or intervene in an invalidation action already pending.

#### **Article 90**

1. A patent shall lapse on:
- (i) the expiration of the term for which it has been granted, or
  - (ii) the surrender of the patent by the patent holder before the Patent Office, with the consent of the parties having rights in the patent, or



(iii) failure to pay a renewal fee in the prescribed time limit, or

(iv) the invention, subject to Article 93<sup>7</sup>, becoming irreversibly unfeasible for exploitation due to the lack of access to the biological material, which is needed for that purpose, however it became inaccessible and unfeasible for reproduction on the basis of the description.

2. In the cases referred to in paragraph (1)(ii)-(iv), the Patent Office shall make decisions on the lapse of a patent.

3. Subject to paragraph (4), a patent shall lapse on a date, on which an event has occurred that is considered under this Law as giving rise to the lapse of the patent. The date of the lapse of the patent shall be confirmed in a decision.

4. In the case of failure to pay a renewal fee within the prescribed time limit, a patent shall lapse on the date on which a preceding period of protection has expired.

## **Article 91**

Patents of addition shall cease to have effect together with a basic patent. Where a basic patent ceases to have effect for a reason which does not affect the invention that is the subject matter of a patent of addition, the patents of addition of the basic patent shall become regular patents and continue to have effect for the period for which the basic patent has been granted.

## **Article 92**

Invalidation or lapse of a patent shall be recorded in the Patent Register.

## **Article 93**

The Prime Minister shall, by way of regulation, determine the detailed requirements to be satisfied by a patent application, the detailed rules and procedure to be applied in the course of processing and examination of patent applications at the Patent

Office including, in particular, the manner and form of publication of patent applications, the extent to which the Patent Office is authorised to make corrections in abstracts, as well as the form in which search reports are to be established, and the manner and term of making them available to third parties. The requirements to be satisfied by patent applications may not be determined in such a way as to encumber the applicant with excessive and unreasonable impediments.

## **Chapter 9**

### **Special Provisions Governing Biotechnological Inventions**

#### **Article 93<sup>1</sup>**

Any reference in this Chapter:

(i) to “biotechnological invention” means the invention, within the meaning of Article 24, concerning a product consisting of or containing biological material, or a process by means of which biological material is produced, processed or used,

(ii) to “biological material” means any material containing genetic information and capable of reproducing itself or being reproduced in a biological system,

(iii) to “microbiological process” means any process involving or performed upon or resulting in microbiological material.

#### **Article 93<sup>2</sup>**

1. The following, in particular, shall be considered as biological inventions eligible for patent protection:

(i) inventions, the subject of which is biological material which is isolated from its natural environment or produced by means of a technical process, even if it previously occurred in nature,

(ii) elements isolated from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, even if the structure of that element is identical to that of a natural element,

(iii) inventions which concern plants or animals, if the technical feasibility of the invention is not confined to a particular plant or animal variety.

2. The industrial application of a sequence or a partial sequence of a gene must be disclosed in the patent application.

### **Article 93<sup>3</sup>**

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

2. The following, in particular, shall be considered as biotechnological inventions, whose exploitation would be contrary to Public order or morality within the meaning of Article 29(1)(i), or with public morality:

- (i) processes for cloning human beings,
- (ii) processes for modifying the germ line genetic identity of human beings,
- (iii) uses of human embryos for industrial or commercial purposes,
- (iv) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes.

### **Article 93<sup>4</sup>**

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

2. The protection conferred by a patent on a process that enables a biological material to be produced, possessing specific characteristics indicated in a patent claim or claims as a result of the invention shall extend to biological material directly obtained through that process and to any other biological material derived from the directly

obtained biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.

3. The protection conferred by a patent on a product containing or consisting of genetic information shall extend to all material, save as provided in Article 93<sup>3</sup>(1), in which the product is incorporated and in which the genetic information is contained and performs its function.

### **Article 93<sup>5</sup>**

1. The protection conferred by a patent shall not extend to biological material obtained by means of a single act of propagation or multiplication of biological material placed on the market by the holder of the patent or with his consent, where the propagation or multiplication necessarily results from the application of the biological material.

2. Any party who has acquired or otherwise obtained the patented biological material from the holder of a patent or with his consent for agricultural use, shall be authorised to use it for propagation or multiplication on his own farm, the extent and conditions of this derogation being the same as provided for the use, without the plant breeder's consent, of plant propagating material of the plant variety protected under the regulations on seed production.

3. The provision of paragraph (2) shall apply accordingly to breeding stock or other animal reproductive material.

### **Article 93<sup>6</sup>**

1. Where an invention involves the use of biological material which is not available to the public and which cannot be described in the description in such a manner as to enable the invention to be reproduced by a person skilled in the art, the disclosure thereof may be made by reference to the material deposited, at the latest at the filing date, in a depositary institution recognised under an international agreement or in a national depositary institution, which is mentioned by the President of the Patent Office in an announcement published in the Official Gazette of the Republic of Poland "Monitor Polski".

2. The President of the Patent Office shall announce the acquisition of the status of the national depositary institution, referred to in paragraph (1), after having received, at the request of the institution concerned, acceptance from the minister competent in respect of the subject of deposited biological materials.

3. Where the deposit referred to in paragraph (1) has been made, the application must be accompanied by an attestation issued by the depositary institution, furnished by the applicant. The attestation should include at least the name of the institution, the date of the deposit and the accession number given to the biological material.

4. The attestation issued by a depositary institution may be furnished within six months from the filing date. In case of late furnishing of the said attestation the deposit of the biological material shall not be considered equivalent to its disclosure in the application.

5. Access to the deposit referred to in paragraph (1) before the publication of the particulars of the patent application shall be limited to the parties mentioned in Article 251(1). At the applicant's request submitted to the Patent Office before the publication of the particulars of the patent application, the above limitation shall extend for the entire term during which the application is processed.

6. After the particulars of the application have been published, unless the request referred to in paragraph (5) has been submitted, and after the patent has been granted, access to the deposit may not, subject to the condition referred to in paragraph (7), be denied to third parties. This provision shall apply accordingly notwithstanding invalidation or lapse of the patent.

7. The sample of the biological material shall be supplied only if the person requesting it undertakes in writing, vis-à-vis the applicant or the holder of the patent, for the term during which the patent remains in force:

(i) not to make it or any material derived from it available to third parties,

(ii) not to use it or any material derived from it except for experimental purposes

- unless the applicant or the holder of the patent expressly waives such an undertaking.

8. Where the Patent Office makes a decision to refuse the grant of a patent or to discontinue the patent granting proceeding, access to the deposited biological material, at the applicant's request submitted within the term provided for in paragraph (5), shall be limited to the parties, mentioned in paragraph (5), for 20 years from the date on which the patent application was filed. The provision of paragraph (7) shall apply accordingly.

### **Article 93<sup>7</sup>**

If the biological material deposited in accordance with Article 93<sup>6</sup> ceases to be available from the depositary institution, a new deposit shall be permitted on the terms as laid down in an international agreement.

## **Part III**

### **Utility Models and Rights of Protection**

#### **for Utility Models**

### **Article 94**

1. Any new and useful solution of a technical nature affecting shape, construction or durable assembly of an object shall constitute a utility model.

2. A utility model shall be considered a useful solution if by means of that solution a practical effect is attainable, expedient in the process of manufacturing or exploitation of the product.

### **Article 95**

1. For a utility model a right of protection shall be granted.

2. A right of protection shall confer the exclusive right to exploit the utility model for profit or for professional purposes throughout the territory of the Republic of Poland.

3. The term of a right of protection shall be 10 years counted from the date of filing of a utility model application with the Patent Office.

#### **Article 96**

The scope of the right of protection shall be determined by the claims contained in the utility model specification.

#### **Article 97**

1. Subject to paragraph (2), the provisions of Articles 31 to 33 shall apply accordingly to utility model applications.

2. A utility model application shall include drawings.

3. A utility model application may relate to one solution only.

4. The requirement referred to in paragraph (3) shall not prevent an application from comprising various forms of the product, representing the same essential technical features of the claimed solution, as well as of the product consisting of elements inherently or functionally linked each with another.

#### **Article 98**

Granted rights of protection for utility models shall be recorded in the Utility Models Register.

## **Article 99**

1. Grant of a right of protection for a utility model shall be evidenced by the issue of a certificate of protection.

2. The utility model specification consisting of the description of the utility model, the claims and drawings shall constitute an integral part of the certificate of protection. The utility model specification shall be made available to third parties and disseminated by the Patent Office.

## **Article 100**

1. Subject to paragraph (2), the provisions of Articles: 25, 28, 29, 35-37, 39-52, 55-60, 62, 66-90 and 92 shall apply accordingly to utility models and rights of protection for utility models.

2. In the case of a utility model, the period provided for in Article 60 shall be 10 years.

## **Article 101**

1. The Council of Ministers shall, by way of regulation, determine the categories of utility models which fall within the sphere of national defence or the security of the State, as well as procedures applied in respect of such utility models both before ascertainment by the competent authority whether or not said utility models are secret, and after deciding on their secrecy.

2. The Prime Minister shall, by way of regulation, determine the detailed requirements to be satisfied by a utility model application, the detailed rules and procedure to be applied in the course of processing and examination of utility model applications at the Patent Office including, in particular, the manner and form of publication of utility model applications, the extent to which the Patent Office is authorised to make corrections in abstracts, as well as the form in which search reports are to be established and the manner and term of making them available to third parties; finally, the manner of making available utility model specifications and disseminating them. The requirements to be satisfied by utility model applications may not be determined in such a way as to encumber the applicant with excessive and unreasonable impediments.



**Part IV**  
**Industrial Designs and Rights in Registration**  
**for Industrial Designs**

**Article 102**

1. Any new and having individual character appearance of the whole or a part of a product resulting from the features of, in particular, the lines, colours, shape, texture or materials of the product and its ornamentation, shall constitute an industrial design.

2. Any industrial or handicraft item, including, in particular, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs, shall be considered to be a product.

3. The following shall also be considered to be a product:

(i) a product which is composed of multiple components, which can be replaced permitting disassembly and reassembly of the product (complex product),

(ii) a component part, if, once incorporated into the complex product, it remains visible during normal use of the latter, the use being understood as excluding maintenance, servicing or repair work.

(iii) a component part, if it may, by itself, be subject of commercialisation.

4. In case of a design applied to or incorporated in a product which constitutes a component part of a complex product within the meaning of paragraph (3)(i), assessment of novelty and individual character shall only be made in consideration of its visible features.

### **Article 103**

1. An industrial design shall be considered new if, before the date according to which priority to obtain a right in registration is determined and subject to paragraph (2), no identical design has been made available to the public, i.e. used, exhibited or otherwise disclosed. Designs shall also be deemed to be identical with those made available to the public if their features differ only in immaterial details.

2. The designs shall not be deemed to have been made available to the public within the meaning of paragraph (1), if it could not have become known to the circles specialised in the sector, to which the design belongs.

3. The provision of paragraph (1) shall not prevent a right in registration to be granted, if a design:

(i) has been disclosed to a third party under explicit or implicit conditions of confidentiality,

(ii) has been disclosed during 12-month period preceding the date according to which priority to obtain a right in registration is determined, by the designer, his successor in title or a third person with the right holder's consent, as well as if the disclosure has occurred as a consequence of an abuse in relation to the designer or his successor in title.

### **Article 104**

1. An industrial design shall be considered to have individual character, if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available before the date according to which priority is determined.

2. In assessing individual character, the degree of freedom of the designer in developing the design shall be taken into consideration.

### **Article 105**

1. For an industrial design a right in registration may be granted.
  
2. The right in registration shall confer the exclusive right to exploit the industrial design for profit or for professional purposes throughout the territory of the Republic of Poland.
  
3. The holder shall enjoy the right to prevent any third party from making, offering, putting on the market, importing, exporting or using a product in which the design is incorporated or to which it is applied, or stocking such a product for those purposes.
  
4. The right conferred by the registration of an industrial design shall include any design which does not produce on the informed user a different overall impression. Article 104(2) shall apply accordingly.
  
5. The right conferred by the registration of an industrial design shall be limited to the kind of products, in respect of which the protection has been applied for.
  
6. Subject to Article 111, the term of a right in registration shall be 25 years counted from the date of filing of an industrial design application with the Patent Office, the said term being divided into 5-year periods.

## **Article 106**

1. Rights in registration shall not be granted for industrial designs whose exploitation would be contrary to public order or morality; exploitation of an industrial design shall not be considered to be contrary to public order merely because it is prohibited by law.
  
2. Subject to the exceptions provided for in this Law, rights in registration shall neither be granted for industrial designs that include the signs referred to in Article 131(2)(ii)-(v).

## **Article 107**

1. The right in registration of an industrial design shall not subsist in features of a product:

(i) which are solely dictated by its technical function,

(ii) which must necessarily be reproduced in their exact form and dimensions in order to permit the product to be mechanically connected to, or to interact with, another product.

2. The provision of paragraph (1) shall be without prejudice to the registration of an industrial design serving the purpose of allowing multiple assembly or connection of mutually interchangeable products within a modular system.

## **Article 108**

1. Subject to paragraphs (2) and (3), the provisions of Articles 31-33 shall apply accordingly to industrial design applications.

2. An industrial design application shall contain illustrations, in particular drawings or photographs. An industrial design application may also contain or samples of a textile fabric.

3. An industrial design application shall not be required to contain the claims and the abstract.

4. One industrial design application may relate to individual appearances of a product having the essential features common (forms of an industrial design).

5. One application may contain no more than ten forms of an industrial design, unless the said forms taken together constitute a complete set of products. All the forms

of the industrial design contained in one application shall be presented in a form of figures on one of the illustrations referred to in paragraph (2).

### **Article 109**

The provisions of Article 48 shall apply accordingly to the grant of priority in respect of industrial designs. However, the Patent Office shall not check the ground for granting priority as regards the condition referred to in Article 48(iv).

### **Article 110**

1. After having established that the industrial design application has duly been made up, the Patent Office shall decide on the grant of a right in registration.

2. The application referred to in paragraph (1) shall not be considered to have duly been made up, if it is in breach of the provisions of Article 106.

### **Article 111**

A right in registration shall be granted subject to payment of a fee for first protection period. The provision of Article 52(2), second sentence, shall apply accordingly.

### **Article 112**

Granted rights in industrial designs registration shall be recorded in the Industrial Designs Register.

### **Article 113**

During the period preceding registration of an industrial design, the Patent Office shall refrain from giving unauthorised parties, without the applicant's consent, any information on the application.

## **Article 114**

1. Grant of a right in industrial design registration shall be evidenced by the issue of a certificate of registration.

2. The industrial design specification containing: the description of the design, the drawing and the photographs or samples of a textile fabric, if any, shall constitute an integral part of the certificate of registration. The industrial design specification shall be made available to third parties and disseminated by the Patent Office.

## **Article 115**

The holder of the right the registration of an industrial design may not prevent any third party from making use of the design:

- (i) for private and for non-commercial purposes,
- (ii) for experimental purposes,
- (iii) consisting of acts of reproduction for the purposes of making citations or of teaching, provided that such acts are compatible with fair practice and do not unduly prejudice the normal exploitation of the design, and that mention is made of the source,
- (iv) applied in or incorporated in the equipment on ships and aircraft registered in another country when these temporarily enter the territory of the Republic of Poland,
- (v) by way of importation of spare parts and accessories for the purpose of repairing the craft referred to in sub-paragraph (iv),
- (vi) by way of execution of repairs on the craft referred to in sub-paragraph (iv),
- (vii) by way of execution, on an individual order, of repairs intended to reproduce a component part of a complex product so as to restore its original appearance.

## **Article 116**

Products manufactured by means of an industrial design and put on the market after the lapse of the right in registration granted for such a design shall not benefit from

the protection of author's economic rights in a work under the provisions of the copyright law.

#### **Article 117**

1. The provisions of Article 89 shall apply accordingly to invalidation of a right in industrial design registration.

2. The finding that the exploitation of the industrial design infringes third parties' personal or author's economic rights shall also constitute a ground for invalidation of the right in registration.

#### **Article 118**

1. Subject to paragraph (2), the provisions of Articles: 35-37, 39, 41, 42, 46, 49, 50, 55, 66(2), 67, 70-81, 90 and 92 shall apply accordingly to industrial designs and to rights in industrial design registration.

2. Changes made in an application in the course of processing thereof may not be such as to alter the design itself and the forms thereof, as presented in the description, in the drawing and in the photographs. This shall not cover the cases where the claimed form of a product is modified, provided that the identity of the product is retained and the modification is requisite for the registration of the industrial design to be granted.

#### **Article 119**

The Prime Minister shall, by way of regulation, determine the detailed requirements to be satisfied by an industrial design application, the detailed rules and procedure of processing applications, including, in particular, the manner of making available and disseminating industrial designs specifications. The requirements to be satisfied by industrial design applications may not be determined in such a way as to encumber the applicant with excessive and unreasonable impediments.

### **Title III**

# **Trademarks and Geographical Indications**

## **Part I**

### **Trademarks and Rights of Protection**

#### **Chapter I**

#### **Trademarks**

##### **Article 120**

1. Any sign capable of being represented graphically may be considered as trademark, provided that such signs are capable of distinguishing the goods of one undertaking from those of other undertakings.

2. The following, in particular, may be considered as trademarks within the meaning of paragraph (1): words, designs, ornaments, combinations of colours, the three-dimensional shape of goods or of their packaging, as well as melodies or other acoustic signals.

3. Any references in this Law to:

(i) trademarks shall also mean service marks,

(ii) goods shall mean, in particular, industrial or handicraft goods, agriculture products or natural products, such as, in particular, waters, minerals, raw materials, as well as, subject to Article 174(3), services,

(iii) counterfeit trademarks shall mean identical trademarks illegally used or trademarks which in the course of trade can not be distinguished from the trademarks registered for the goods covered by the right of protection,

(iv) earlier trademarks shall mean the trademarks applied for registration or registered basing on the earlier priority.



## **Article 121**

For a trademark a right of protection may be granted.

## **Article 122**

1. The provision of Article 120(1) shall not prevent a sign from being considered as a trademark, if the sign is intended for concurrent use by several undertakings who have jointly applied for the protection thereof, provided that such use is not contrary to public interests and is not intended to mislead the public, in particular as to the nature, intended purpose, quality, properties or origin of the goods (joint right of protection).

2. The principles of the use of a trademark on the basis of a joint right of protection shall be determined by the regulations governing use of trademarks adopted by the undertakings referred to in paragraph (1).

## **Article 123**

1. Subject to Articles 124 and 125, priority to obtain a right of protection for a trademark shall be determined according to the date of filing of a trademark application with the Patent Office.

2. An application shall be deemed to have been filed on the date on which it has been received by the Patent Office or its transmission by means of fax has effected. The provisions of Article 13(iii)-(v) shall apply accordingly to applications transmitted by means of fax.

## **Article 124**

In the Republic of Poland, priority to obtain a right of protection for a trademark shall be available under the rules laid down in international agreements and shall be determined according to the date of the first regular filing of the trademark application, provided that the application is subsequently filed with the Patent Office within a period of six months counted from that date.

## **Article 125**

1. Priority to obtain a right of protection for a trademark shall be determined, under the rules laid down in international agreements, according to the date on which the goods bearing that trademark have been displayed in Poland or abroad at an official or officially recognised international exhibition, provided that the trademark concerned is applied for protection with the Patent Office within a period of six month from that date.

2. Priority to obtain a right of protection for a trademark shall also be determined, under the provision of paragraph (1), according to the date of display of the goods bearing the trademark at a public exhibition held in Poland, other than that specified in paragraph (1), indicated by the President of the Patent Office in a communication published in the Official Gazette of the Republic of Poland "*Monitor Polski*".

3. The indication of exhibitions, referred to in paragraph (2), may only be made in respect of an event having proved reliable, in particular where it enjoys recognised fame, long-lasting tradition or it has been organised by a recognised organisation whose professional activity is to organise like exhibitions.

4. Subject to the application of the conditions referred to in paragraph (3), a competent minister or voivode may likewise take the initiative in recognising a public exhibition in Poland as that serving as a basis for claiming the priority referred to in paragraph (2).

## **Article 126**

Where a trademark that is the subject matter of the first regular application has been affixed to the goods earlier displayed at an exhibition and within an interval between the date of display and the date of filing of the application it has enjoyed the provisional protection provided for in the Paris Convention, the priority to obtain a right of protection, referred to in Article 124 and the beginning of the period prescribed therein for filing an application with the Patent Office, shall be determined according to the date of displaying the goods bearing this trademark at the exhibition.

## **Article 127**

1. The priority referred to in Articles 124 and 125 (earlier priority) may be assigned and be subject to succession.

2. A contract for the transfer of the priority referred to in paragraph (1) shall be in writing on pain of invalidity.

### **Article 128**

For the purpose of claiming priority abroad the Patent Office, at the request of the applicant filing a trademark application, shall issue a document in evidence that the trademark application has been filed with the Patent Office (priority document). The provisions of Article 19(2) shall apply accordingly.

### **Article 129**

1. Rights of protection shall not be granted for signs which:

- (i) cannot constitute a trademark,
- (ii) are devoid of sufficient distinctive character.

2. Subject to Article 130, the following shall be considered as being devoid of sufficient distinctive character:

- (i) signs which are not capable of distinguishing, in trade, the goods for which they have been applied,
- (ii) signs which consist exclusively or mainly of elements which may serve, in trade, to designate the kind, origin, quality, quantity, value, intended purpose, manufacturing process, composition, function or usefulness of the goods,
- (iii) signs which have become customary in the current language and are used in fair and established business practices.

### **Article 130**

When assessing whether or not a sign is of a sufficient distinctive character, any circumstances accompanying its use in marking the goods in trade shall be taken into consideration. Grant of a right of protection under Article 129(1)(ii) may not be denied in particular where prior to the date of filing of a trademark application with the Patent Office, the trademark concerned has acquired, in consequence of its use, a distinctive character in the conditions of the regular trade.

## **Article 131**

1. Rights of protection shall not be granted for signs:

- (i) whose use infringes third parties' personal or economic rights, or
- (ii) that are contrary to law, public order or morality, or
- (iii) which, as for their nature, may mislead the public, in particular as to the nature, properties of the goods or, with regard to paragraph (3), as to the geographic origin thereof.

2. A right of protection shall not be granted for a sign, if:

- (i) it has been applied for protection with the Patent Office in bad faith,
- (ii) it incorporates the name or abbreviated name of the Republic of Poland, or its symbols (emblem, national colours or national anthem), the names or armorial bearings of Polish voivodships, towns or communities, the insignia of the armed forces, paramilitary organisations or police forces, reproductions of Polish decorations, honorary distinctions or medals, military medals or military insignia, or other official or generally used distinctions and medals, in particular those of government administration, local self-administration or social organisations performing activities in vital public interests, where these organisations' activities extend to the entire territory of the State or to a substantial part thereof, unless the applicant is able to produce evidence of his right, in particular in a form of an authorisation issued by a competent State agency or a permission given by an organisation, to use the sign in the course of trade,
- (iii) it incorporates the abbreviated names or symbols (armorial bearings, flags, emblems) of other countries, international organisations, as well as official signs, hallmarks indicating control and warranty adopted in other countries, if the prohibition of registration follows from international agreements, unless the applicant is able to produce an authorisation issued by a competent authority, which authorises him to use such signs in the course of trade,

(iv) it incorporates officially recognised signs accepted for the use in trade, in particular: safety marks, quality marks or hallmarks of legalisation – to the extent to which it could mislead the public as to the nature of such signs, unless the applicant is able to prove his right to use them,

(v) it incorporates elements being symbols, in particular of a religious, patriotic or cultural nature whose use could hurt religious feelings, sense of patriotism or national tradition,

(vi) it constitutes a form or another feature of the goods or their packaging, which is dictated exclusively by their nature, is necessary to achieve a technical result or it gives substantial value to the goods.

3. In the case of wines and spirits, any trademark, which incorporates geographical elements discordant with the true origin of the good, shall be considered as a trademark misleading the public.

4. A right of protection shall not be granted for a trademark that contains geographical elements which, although literally true as to the territory, region or locality, in which the goods originate, are of such a nature as to mislead the public by false representing that the goods originate in another territory famous of given goods. In the case of homonymous geographical indications for wines and beers, protection shall be accorded on the condition that the subsequent applicant, who has later filed his application alters his trademark at the invitation of the Patent Office so as to make it distinguishable from the earlier trademark.

5. The filing, as a trademark, of a sign which is used by another person as the name under which that person's business activity is run, in particular where the name in question is an ordinary word, shall not constitute an autonomous ground for refusal to grant a right of protection, where the applicant has acted in good faith and:

(i) the name is not used as a notorious trademark on the territory of the Republic of Poland for the goods of the same kind, or

(ii) at the date of filing of the trademark application there were no conflicting interests due, in particular, to a different sphere of activity, the range of activity limited to a local territory, or different forms of use of the both signs.

## Article 132

1. A right of protection shall not be granted for a trademark in respect of identical or similar goods, if the trademark is identical or similar to:

(i) a registered geographical indication, unless the applicant is entitled to use that indication and the grant of a right of protection for the trademark is not supposed to excessively restrain other entitled parties from using the registered geographical indication,

(ii) a trademark which, before the date according to which priority to obtain a right of protection is determined, has been well-known and used as a trademark in respect of the goods of another party,

(iii) a trademark earlier registered in the Republic of Poland, whose registration has terminated, provided that an interval between the date of lapse of the right of protection for the trademark and the date on which a similar trademark has been applied for by another party, is, subject to Article 133, no longer than two years.

2. A right of protection for a trademark shall not be granted, if the trademark:

(i) is identical to a trademark registered or applied for registration with an earlier priority date (provided that the latter is subsequently registered) on behalf of another party for identical goods,

(ii) is identical or similar to a trademark for which a right of protection was granted or which has been applied for protection with an earlier priority date (provided that the latter is subsequently granted a right of protection) on behalf of another party for identical or similar goods, if a risk of misleading the public exists, in particular by evoking associations with the earlier mark,

(iii) is identical or similar to a renown trademark registered or applied for registration with an earlier priority (provided that the latter is subsequently registered) on behalf of another party for any kind of goods, if it without due cause would bring unfair advantage to the applicant or be detrimental to the distinctive character or the repute of the earlier trademark. The above provision shall apply to well-known trademarks accordingly.

3. The protection of a trademark which contains the signs referred to in Article 131(2)(ii)-(iv) and the symbols referred to in Article 131(2)(v), or signs which relate to the origin of the goods, shall not prevent a trademark containing the same elements from being granted a right of protection on behalf of another undertaking for identical or

similar goods, provided that the both trademarks remain easily distinguishable in the course of trade.

4. Paragraph (3) shall apply accordingly to press-titles as trademarks that contain words or combinations of words customary used in the press-market.

5. The provisions of paragraphs (1) and (2) shall apply accordingly where a trademark or a geographical indication has been applied for or registered under the procedure referred to in Article 4.

### **Article 133**

The provision of Article 132(1)(iii) shall not apply where the protection has terminated under Article 169(1)(i) or the right holder of the earlier right has given his consent for the later trademark being granted a right of protection.

### **Article 134**

1. Grant of a right of protection for a trademark in respect of specific goods shall not prevent the undertaking from being granted a right of protection for an identical trademark in respect of the identical or similar goods also or being granted a right of protection for a similar trademark in respect of identical or similar goods.

2. On the conditions provided for in Article 122, a joint right of protection may also be granted, shared by the undertaking entitled to the earlier trademark.

### **Article 135**

Grant of a right of protection for a trademark in respect of specific goods shall not constitute an autonomous ground for refusal to grant a right of protection for a trademark in respect of the goods identical or similar to those of another undertaking for a sole reason that the trademark contains an identical or similar sign which refers to personal rights, in particular the owner's name.

## **Chapter 2**

### **Collective Trademarks and Collective Guarantee Trademarks**

#### **Article 136**

1. Any organisation enjoying the status of legal entity and created in order to represent interests of the undertakings, may be granted a right of protection for a trademark intended for use in the course of trade by that organisation and the entities grouped therein (collective trademark).

2. The principles of the use of a trademark in the course of trade by the organisation referred to in paragraph (1) and by the entities grouped therein shall be determined by the regulations governing use of trademarks adopted by that organisation.

#### **Article 137**

1. Any organisation enjoying the status of legal entity, which itself refrains from using the trademark, may be granted a right of protection for a trademark intended for use by the undertakings, which follow the rules laid down in the regulations governing use of trademarks adopted by the entitled organisation and are liable to control by that organisation to this extent (collective guarantee trademark).

2. A holder of the right of protection for a collective guarantee trademark may not, without important reasons, deny the undertakings, which meet the conditions specified in the regulations referred to in paragraph (1), the right to use that trademark.

## **Chapter 3**

### **Filing of Trademark Applications**



## **Article 138**

1. In a trademark application the trademark has to be determined and the goods for which the trademark is intended specified. The provision of Article 31(4) shall apply accordingly.

2. One and the same application may relate to one trademark only. In the case of colour trademarks, a sign that incorporates one arrangement of colours shall be considered as one trademark. The provisions of Article 39 shall apply accordingly.

3. An application concerning a collective trademark, collective guarantee trademark or an application concerning a trademark filed in order to obtain a joint right of protection shall be accompanied by the regulations governing use of trademarks.

4. The regulations referred to in paragraph (3) shall, in particular, specify the manner of use of the trademark, common properties of the goods for which the mark is intended, the principles of verifying those properties, and the consequences of failure to comply with the rules of the regulations. The regulations governing use of collective guarantee trademarks shall additionally be required to specify the detailed conditions for and the procedure of admission by the entitled organisation of other undertakings to use the trademark.

## **Article 139**

An applicant wishing to take advantage of the priority of an earlier application shall be required to include in his trademark application a relevant declaration to that effect together with a document in evidence that the trademark application has been filed in the indicated country or the product bearing the trademark has been displayed at a specified exhibition. The document may also be furnished within three months from the date of filing of the application. In case of late furnishing of such declaration or document, the priority claim shall be without effect.

## **Article 140**

1. Until such time as a decision is taken, the applicant may make additions and corrections to his application, provided that such additions or corrections may not alter

the essential characteristics of the trademark nor extend the list of the goods for which the trademark has been applied.

2. Subject to paragraph (1), the applicant may divide the application in respect of the indicated goods, while preserving the date of priority.

#### **Article 141**

1. When specifying in the trademark application the goods for which the mark is intended, the applicant shall be required to use technical terminology in the Polish language and explicit terms, and to present the list of the goods grouped according to an accepted classification system. Lists containing more than 15 words shall be established on a separate sheet.

2. The provisions of Article 36 shall apply accordingly to the filing of trademark applications. An application concerning a trademark presented or expressed in a specific graphical form shall include photographic reproductions or printed copies, which represent or constitute the expression of that mark. An application concerning a sound mark shall include the sound recorded on a recording tape.

#### **Article 142**

The Patent Office may make corrections in the documents making up the application only in order to remedy obvious mistakes or language errors. This shall not apply to the list of goods and classification thereof, provided that the said corrections may not alter the scope of the protection sought.

### **Chapter 4**

#### **Processing of Trademark Applications**

#### **Article 143**

The Patent Office shall publish a trademark application immediately after the expiration of three months from the date of filing of that application. As from the date of publication any third parties may acquaint themselves with the trademark determined in the application and with the list of the goods for which the mark is intended; they may also submit to the Patent Office their observations as to the existence of grounds that may cause a right of protection to be denied.

#### **Article 144**

The Patent Office shall make a decision on the grant of a right of protection for a trademark after having established that the statutory requirements for the grant of the right have been satisfied.

#### **Article 145**

1. Subject to paragraph (2), where the Patent Office finds that the statutory requirements for the grant of a right of protection for a trademark have not been satisfied, it shall make a decision on refusal to grant the right.

2. Before the decision referred to in paragraph (1) is made, the Patent Office shall fix a time limit, within which the applicant is invited to react on the collected evidences and documents which imply the existence of grounds that may cause the right of protection to be denied.

3. Where the statutory requirements are found not to have been satisfied in respect to only certain goods and the applicant fails to reduce the list of the goods, the Patent Office shall grant the right of protection for the goods for which it may be granted, and refuse to grant it for the remaining part thereof.

#### **Article 146**

1. Where similar trademarks have been applied for registration in respect of goods of the same kind by two or more persons enjoying the same date of priority and the trademarks in question are not easily distinguishable, rights of protection may only be granted on the condition that alterations are made, which enable the trademarks to be

easily distinguishable in the course of trade. Failing this, the Patent Office shall take a decision on refusal to grant the rights of protection.

2. When reasonable, the Patent Office may indicate that of the applicants who would be expected to make alterations enabling the trademarks to be easily distinguishable in the course of trade.

3. Satisfying of the condition referred to in paragraph (1) may not lead to the grant of a right of protection for a trademark which is dissimilar to the trademark originally applied for protection or affect another party's priority to obtain a right of protection.

#### **Article 147**

1. The Patent Office shall make a decision on the grant of a right of protection after having established that the statutory requirements for the grant of a right of protection for a trademark have been satisfied.

2. A right of protection shall be granted subject to payment of a fee for a ten-year protection period. Failure to pay the fee shall result in declaring, by the Patent Office, the decision on the grant of the right of protection lapsed.

3. The provision of paragraph (2) shall apply accordingly where a right of protection has been granted at the request for the conversion, into a domestic application, of the trademark registered in accordance with the European Union's regulations on the Community trademark, provided that for a purpose of determining when the fees become due, a ten-year period shall start to run from the date of filing the request for conversion.

#### **Article 148**

The provisions of Articles: 41, 42, 43(2)(ii) and (3), 44(1), 45(1), 46(1) and (2), 48 and 55 shall apply accordingly to the processing of trademark applications.

## **Article 149**

Granted rights of protection for trademarks shall be recorded in the Trademark Register.

## **Article 150**

The grant of a right of protection for a trademark shall be evidenced by the issue of a certificate of protection for a trademark.

## **Article 151**

The right holder may indicate that his trademark has been registered by adding the letter “R” within a circle next to the trademark.

## **Article 152**

The Prime Minister shall, by way of regulation, determine the detailed requirements to be satisfied by a trademark application, the detailed rules and procedure to be applied in the course of examination of trademark applications including, in particular, the extent to which the relevant information may be disclosed to the public after the expiration of the period referred to in Article 143 and the manner in which it is made available, as well as the extent to which the Patent Office is authorised to make corrections in the list of goods and their classification. The requirements to be satisfied by trademark applications may not be determined in such a way as to encumber the applicant with excessive and unreasonable impediments.

## **Chapter 5**

### **Rights of Protection for Trademarks**

## **Article 153**

1. The right of protection shall confer the exclusive right to use the trademark for profit or for professional purposes throughout the territory of the Republic of Poland.

2. The term of the right of protection shall be 10 years counted from the date of filing of a trademark application with the Patent Office.

3. The term of protection may, at the request of the right holder, be extended for subsequent ten-year periods in respect of all or of a part of the goods.

4. The request referred to in paragraph (3) shall be submitted before the expiration of a running protection period, however not earlier than one year before the expiration thereof. The request shall be submitted together with the payment of a due protection fee.

5. The request referred to in paragraph (3) may also be submitted, against payment of an additional fee, within six months after the expiration of a protection period. The said time limit shall be non-restorable.

6. The Patent Office shall make a decision on refusal to extend the term of protection for a trademark, where the request has been submitted after the expiration of the time limit referred to in paragraph (5) or the due fees referred to in paragraphs (4) and (5) have not been paid.

## **Article 154**

The use of a trademark shall, in particular, consist of:

(i) affixing the trademark to the goods covered by the right of protection or to the packaging thereof, offering and putting the goods on the market, importing or exporting thereof, or their storing for the purpose of offering and putting on the market, as well as offering or providing services under that trademark,

(ii) using the trademark on business documents handled in putting the goods on the market or in rendering services,

(iii) using the trademark in advertising.

## **Article 155**

1. The right of protection for a trademark shall not extend to the acts in respect of the goods bearing that trademark consisting, in particular, of offering the goods or further putting on the market the goods bearing that trademark, where the said goods have earlier been put on the market on the territory of the Republic of Poland by the right holder or with his consent.

2. The right of protection for a trademark shall neither be considered infringed by an act of importation or other acts, referred to in paragraph (1), in respect of the goods bearing the trademark, if these goods have earlier been put on the market on the territory of the European Economic Area by the right holder or with his consent.

3. Paragraphs (1) and (2) shall not apply, where there exist legitimate reasons for the right holder to oppose further commercialization of the goods, especially where the condition of the goods is changed or impaired after they have been put on the market.

## **Article 156**

1. The right of protection shall not entitle the right holder to prohibit third parties from using, in the course of trade:

(i) their names or addresses,

(ii) indications concerning, in particular, the features and characteristics of goods, the kind, quantity, quality, intended purpose, origin, the time of production or of expiration of usability period,

(iii) a registered mark or a similar mark, if it is necessary to indicate the intended purpose of the product, in particular as far as offered spare parts, accessories or services are concerned,

(iv) a registered geographical indication, if the use thereof by these parties is authorised under other provisions of this Law.

2. The use of the signs referred to in paragraph (1) shall only be permitted, where it satisfies reasonable needs of the user and of purchasers of the goods and is, at the same

time, in accordance with honest practices in industrial or commercial business, or in services.

### **Article 157**

The holder of a trademark registration shall not be entitled to prohibit a third party from using that mark or a mark similar thereto in the course of trade, if he has refrained from using that mark within the meaning of Article 169(1)(i), (4) and (5).

### **Article 158**

1. The holder of a trademark registration shall not be entitled to prohibit a third party from using the name under which he runs his business activity, provided that said name is not used for marking the goods being the subject of that activity and no risk of misleading the public as to the origin of the goods exists, in particular owing to a different range of activities or the use of the name being limited to a particular locality.

2. Paragraph (1) shall not apply, where a third party, when using the name under which it runs its business activity, is in bad faith.

### **Article 159**

1. A joint owner of a trademark registration may use the trademark in his own scope of activity and enforce his claims for infringement of the right of protection without the other joint owners' consent.

2. To the extent as not regulated by this Law, the provisions of the Code of Civil Law governing joint ownership in fractional parts shall apply to the joint ownership, unless the contract of joint ownership of the right of protection stipulates otherwise.

### **Article 160**

1. Any person who, when running a business activity locally to a narrow extent, has used in good faith the mark subsequently registered as a trademark on behalf of



another party, shall have the right to continue to use that mark free of payment to the same extent to which he had previously used it.

2. At the request of an interested party, the right referred to in paragraph (1) shall be recorded in the Trademark Register. The right may be assigned to another party only together with the enterprise.

### **Article 161**

1. To the extent as follows from an international agreement, where a trademark has been applied for protection by and on behalf of, or the right of protection has been granted for, an agent or a representative of the person enjoying the exclusive right to use that trademark in another country, that person may, if the agent or representative acted without that person's consent, demand that the protection granting proceeding be discontinued or the right of protection revoked. He may also demand that the right of protection be granted on his behalf, or the right already granted transferred to him.

2. The right may not be demanded to be revoked or transferred, where the entitled person referred to in paragraph (1) has acquiesced, for a period of five successive years, in the use of the registered trademark while being aware of such use.

### **Article 162**

1. The right of protection may be assigned or be subject to succession. The provisions of Article 67(2) and (3) shall apply accordingly.

2. *(deleted)*

3. The right of protection for a collective trademark may be assigned as a joint right of protection to the undertakings grouped in the organisation referred to in Article 136. The contract of assignment shall determine the rules governing the use of such trademark to the extent to which it is practised in respect of the regulations referred to in Article 122(2).

4. The right of protection for a trademark may also be assigned in respect of certain goods for which the right of protection has been granted, if the goods for which the trademark remains registered on behalf of the vendor are not of the same kind. Once assigned, the right in question shall be dealt with as independent of the right enjoyed by the vendor.

5. The contract of assignment of a share in the joint right of protection shall be valid subject to the consent given by all of the joint owners.

6. Paragraphs (1), (3) to (5) shall apply accordingly to the right deriving from an application filed with the Patent Office, for which no right of protection has yet been granted.

### **Article 163**

1 The holder of a trademark registration may authorise another party to use the trademark under a concluded licence contract. The provisions of Article 76, Articles 78 and 79 shall apply accordingly to such contracts.

2. A licensee may grant a sub-licence for the use of the trademark within the scope of the authorisation granted to him.

3. A licensee may indicate that he has been granted a licence for the use of the trademark by adding an indication "lic." next to the trademark.

4. In case of exercising a licence for the use of the trademark, the licensee shall, at the request of the licensor, be obliged to indicate that he uses the trademark under the licence contract by adding the indication referred to in paragraph (3).

## **Chapter 6**

**Invalidation and Lapse of  
the Right of Protection for a Trademark**

**Article 164**

The right of protection for a trademark may be invalidated in whole or in part at the request of any person having a legitimate interest therein, provided that that person is able to prove that the statutory requirements for the grant of that right have not been satisfied.

**Article 165**

1. A request for invalidation of the right of protection shall not be admissible:

(i) on the ground that it conflicts with an earlier trademark or the personal or economic rights of the requesting party have been infringed, where the requesting party has acquiesced, for a period of five successive years, in the use of the registered trademark while being aware of such use,

(ii) after the expiration of a period of five years from the grant of the right of protection, where the right in question was granted in breach of the provisions of Article 129, however in consequence of its use the trademark has acquired a distinctive character,

(iii) on the ground that it conflicts with a well-known trademark, where the party entitled to the well-known trademark has acquiesced, for a period of five successive years of the use of the registered trademark, in the use of the latter while being aware of such use.

2. Paragraph (1) shall not apply, where the holder of the right has acquired the right in bad faith.

**Article 166**

1. The right of protection for a trademark may not be invalidated on a sole ground that the trademark is similar to an earlier trademark, where the latter has not been used within the meaning of Article 169(1)(i), (4) and (5).

2. In the case referred to in paragraph (1), an exception of non-use of the trademark may only be raised when accompanied by a request for declaring the right of protection lapsed. The exception shall be liable to examination jointly with the request for invalidation.

### **Article 167**

The General Public Prosecutor of the Republic of Poland or the President of the Patent Office may, in the public interest, request that the right of protection for a trademark be invalidated or intervene in an invalidation action already pending.

### **Article 168**

1. The right of protection for a trademark shall lapse:

(i) on expiry of the term of protection for which it has been granted,

(ii) on surrender of the right by the owner thereof before the Patent Office, with the consent of the parties having their rights therein.

2. The surrender of the right, referred to in paragraph (1)(ii), may also concern only certain goods for which the right has been granted (restriction of the list of the goods).

3. The surrender of a share in the joint right shall result in the transfer of the share on behalf of the other joint owners, proportionally to their shares.

4. Subject to paragraph (3), in the case referred to in paragraph (1)(ii), the Patent Office shall take a decision on the lapse of the right of protection.

### **Article 169**

1. The right of protection for a trademark shall also lapse:

(i) on failure to put to genuine use of the registered trademark for the goods covered by the registration for a period of five successive years, unless serious reasons of non-use thereof exist,

(ii) on loss by the trademark of distinctive features for the reason that in consequence of the owner's acting or negligence it has become, in the course of trade, a customary mark consisting exclusively of elements which may serve, in the course of trade, for indicating, in particular, the kind, quality, quantity, price, intended purpose of the good, the process, time or place of its manufacturing, the composition, function or usability of the good, in respect of the goods for which the trademark has been registered,

(iii) in consequence of acting by the right holder or by a third party on his consent, where the trademark is likely to mislead the public as to, in particular, the nature, quality, characteristic features or origin of the good.

2. In the cases referred to in paragraph (1), the Patent Office shall make a decision on the lapse of the right of protection for the trademark at the request of any party having a legitimate interest therein.

2<sup>1</sup> In the instances referred to in paragraph (1)(iii) the Patent Office shall take a decision declaring the right of protection for the trademark lapsed at the request of:

(i) national or regional organisations whose statutory task is to protect interests of:

(a) consumers,

(b) undertakings;

(ii) President of the Office for Competition and Consumer Protection;

(iii) district (city) consumer ombudsman.

3. The General Public Prosecutor of the Republic of Poland or the President of the Patent Office may, in the public interest, request that a right of protection for a trademark be declared lapsed or may intervene in an invalidation action already pending.

4. Use of a trademark within the meaning of paragraph (1) shall also mean the use of a mark:

- (i) in a form varying in elements which do not alter the distinctive character of the mark in the form for which the right of protection has been granted,
- (ii) by affixing the mark to goods or the packaging thereof solely for export purposes,
- (iii) by a third party with the right holder's consent,
- (iv) by a party authorised to use the collective trademark or the collective guarantee trademark.

5. Use of a trademark in advertising of the product, which is neither available on the market nor is manufactured in the country for export purposes shall not be deemed to constitute genuine use.

6. Where a proceeding for the declaration of the right of protection lapsed is initiated, the burden of proof that the trademark has been used or that serious reasons for non-use of the trademark exist shall be on the holder of the right of protection.

7. On the conditions laid down in paragraphs (1) to (6), as well as in case of the regulations governing use of trademarks not being observed, a decision may be taken on the lapse of the right in respect of a joint owner. This provision shall apply accordingly to a right of protection for a collective trademark and collective guarantee mark.

## **Article 170**

1. Subject to paragraph (2), the Patent Office shall dismiss a request for declaring the right of protection lapsed in the case referred to in Article 169(1)(i), if before the submission of the request genuine use of the mark has started or has been resumed.

2. Start or resumption of the use of the trademark after the expiration of an uninterrupted period of five successive years of non-use and within a period of three months preceding the submission of the request for declaring the right of protection lapsed, shall be disregarded, if preparations for the start or resumption of the use have been undertaken immediately after the right holder became aware of possible submission of such request.

3. Paragraphs (1) and (2) shall apply accordingly in the cases referred to in Article 169(7).

4. Loss of a right to use a sign or a symbol, referred to in Article 131(2) incorporated in a trademark shall not constitute a ground for non-making a decision declaring the right of protection for that trademark lapsed, if that sign or symbol ceased to be used in the trademark before a request for the declaration of the right of protection lapsed has been submitted.

#### **Article 171**

Where the reason for the lapse of the right of protection for a trademark involves only certain goods, the lapse of the right shall be effective only in respect of these goods.

#### **Article 172**

Subject to Article 170, a right of protection for a trademark shall terminate on a date of the occurrence of the event, which is considered under this Law as giving rise to the lapse of the right of protection. The date of the termination of the right of protection shall be confirmed in a decision.

#### **Article 173**

Invalidation or lapse of a right of protection shall be recorded in the Trademark Register.

**Part II**  
**Geographical Indications**

**Chapter 1**  
**Introductory Provisions**

**Article 174**

1. For the purpose of this Law, geographical indications shall be word indications which in an explicit or implicit manner designate the name of a place, locality, region or country (territory), which identify a good as originating in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to the geographical origin of that good.

2. A foreign geographical indication may only be granted protection in Poland, if it enjoys protection in the country of its origin.

3. Any reference in this Part to goods shall not mean services.

**Article 175**

1. The following shall constitute geographical indications:

(i) designations of origin used to describe products:

(a) originating in a specific territory, and

(b) the properties of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production or processing of which takes place in that territory,

(ii) names of regions used to describe products:

(a) originating in a specific territory, and



(b) the properties or other characteristics of which are essentially attributable to their geographical origin, that is the territory on which they are produced or processed.

2. Geographical indications shall also mean designations used to describe the products produced of raw materials or intermediate products coming from a defined area larger than the production or processing area, provided that special conditions for the preparation of the raw materials or intermediate products exist and there are inspection arrangements to ensure that those conditions are adhered to.

3. Subject to the conditions referred to in paragraph (2), geographical indications shall also be geographical designations which do not correspond to the true place, in which the product originates, or other traditional designations, if they are normally used in respect of the goods originating in a defined area.

## **Chapter 2**

### **Filing and Processing of Applications**

#### **Concerning Geographical Indications**

#### **Article 176**

1. An application concerning a geographical indication shall include:
  - (i) a detailed description of the indication and of the elements with which it is to be used in the course of trade, such as labels and the packaging,
  - (ii) the specification of the goods for which the indication is intended,
  - (iii) the detailed delimitation of the area, to which it relates,
  - (iv) a description of the characteristic features or properties of the products as originating in the defined area,
  - (v) the conditions of the use of the geographical indication, including: the production process, the characteristic features or properties of the products, other requirements to be fulfilled by the persons wishing to use that indication and, where applicable, the inspection arrangements,

(vi) the specification of the undertakings which use or intend to use the indication.

2. An application may be filed by an organisation entitled to represent interests of the producers running their business activities on a given territory.

3. The organisation referred to in paragraph (2) shall be required to attach to the application concerning the geographical indication a certificate confirming its title to act.

4. An application may also be filed by a state or local administration agency competent in respect of the territory, to which the geographical indication relates.

5. In the cases referred to in paragraphs (2) and (4), persons applying for registration of foreign geographical indications shall be required to refer to, or to complete the application with, a document confirming that the indication is provided protection in the country of its origin. In particular, any international agreement under which geographical indications are protectable may be considered as such confirmation document.

## **Article 177**

1. A geographical indication, the use of which would encroach upon a right of protection for a trademark, shall only be eligible for registration, if the holder of the right of protection surrenders his right.

2. Surrender of the right of protection for a trademark shall not be required, where in the application of the geographical indication for registration, filed in agreement with the holder of the trademark registration, the latter is mentioned among the parties authorised to use that indication and the maintenance of his right is not supposed to entail excessive restrictions on freedom to use the geographical indication by other authorised parties.

3. When assessing whether or not the protection of the trademark is supposed to entail excessive restrictions on freedom to use the geographical indication by other

authorised parties, that indication's capability of being used in forms other than the form which is represented by the trademark shall, in particular, be taken into account.

### **Article 178**

1. Indications which, although literally true as to the territory in which the goods originate, falsely represent to the public that the goods originate in another territory famous of given goods originating therein, shall not be eligible for registration. In the case of homonymous geographical indications, protection shall be accorded on the condition that the applicant of the later application makes, at the invitation of the Patent Office, appropriate alterations in his indication enabling it to be easily distinguishable from the indication already registered or earlier applied for registration.

2. The provision of paragraph (1) shall apply where a geographical indication has been registered under the procedure referred to in Article 4.

### **Article 179**

A right in registration may not be granted for the indication, which in consequence of its extensive use for marking a kind of goods became a generic name, unless it is in public interest or the protection of the indication follows from an international agreement.

### **Article 179<sup>1</sup>**

1. A right in registration shall not be granted for a geographical indication to which the regulations of the European Union for the protection of geographical indications and designations of origin apply.

2. Applications of the indications and designations referred to in paragraph (1) shall be filed with the Patent Office which checks whether an application has been duly drafted and is justified.

3. The application shall be considered duly drafted and justified, where it complies with the requirements provided for in the regulations referred to in paragraph (1). The provision of Article 180 shall apply accordingly.

4. Where, after the checking, the application has been found duly drafted and justified, the Patent Office shall transmit to the European Commission the application concerning a geographical indication or a designation of origin together with the required documents and notify the applicant accordingly.

5. On the conditions and to the extent as specified in the regulations mentioned in paragraph (1), geographical indications and designations of origin shall, from the date of the transmittal referred to in paragraph (1), enjoy transitional protection on the territory of the Republic of Poland.

6. The provisions of paragraphs (1) to (5) shall apply accordingly to requests for amendments of specifications of the indication mentioned in paragraph (1).

7. The Patent Office shall be competent to examine oppositions to the registration and requests for invalidation of the registration of a geographical indication or a designation of origin, referred to in paragraph (1).

8. While examining applications, requests or oppositions referred to in paragraphs (2), (6) and (7), the provisions of Articles 244, 245, 248 and 249 shall apply accordingly.

## **Article 180**

In the course of processing an application concerning a geographical indication the Patent Office shall invite the applicant to complete the application or correct identified defects or essential faults within a fixed time limit, failure which shall result in discontinuance of the proceeding.

## **Article 181**

During the period preceding registration of a geographical indication, the Patent Office shall not disclose to unauthorised parties any information on the application without the applicant's consent.

## **Article 182**

1. The Patent Office shall make a decision on the grant of a right in registration for a geographical indication after having established that the application for registration has duly been made up.

2. The application shall not be deemed to have duly been made up, where the indication fails to represent or falsely represents the origin of the product, or where it fails to satisfy the requirements for the grant of the right in registration, referred to in Articles 174(2) and 176 to 179. The provisions of Article 49 shall apply accordingly.

3. A right in registration shall be granted subject to payment of a protection fee. Failure to pay the fee within the prescribed time limit shall result in declaring by the Office that the decision on the grant of the right in registration has lapsed.

4. Granted rights in registration for geographical indications shall be recorded in the Register of Geographical Indications.

5. The grant of a right in registration for a geographical indication shall be evidenced by the issue of a certificate of registration.

## **Article 183**

The Prime Minister shall, by way of regulation, determine the detailed requirements to be fulfilled by the application of a geographical indication for registration, as well as the detailed rules and procedure applied in processing applications. The requirements to be satisfied by geographical indication applications may not be determined in such a way as to encumber the applicant with excessive and unreasonable impediments

**Chapter 3**  
**Rights in Registration**  
**for Geographical Indications**

**Article 184**

1. For a geographical indication a right in registration may be granted.
  
2. Term of protection for a geographical indication shall be unlimited and shall start from the date of its entry in the Register of Geographical Indications kept by the Patent Office.

**Article 185**

1. A geographical indication for which a right in registration has been granted may not be used on the territory of the Republic of Poland by parties, whose products do not satisfy the requirements for the grant of a right in registration. The provisions of Articles 154, 155 and 156 shall apply accordingly.
  
2. A geographical indication may not be used by the parties referred to in paragraph (1) even if such use is not intended to designate the geographical origin of the products or where the true place of the production of the product is indicated.
  
3. A geographical indication may not be used by the parties referred to in paragraph (1) even if accompanied by expressions indicating the kind of the product, such as “imitation”, “type”, “process”.
  
4. The prohibition referred to in paragraphs (1) to (3) shall cover geographical indications in their original reading, in translations or in other related forms.

## **Article 186**

Any parties who, while operating on a given territory, earlier used a geographical indication in good faith, and whose products do not satisfy the requirements for the grant of a right in registration, may continue to use that indication, however for no longer than one year counted from the date of the grant of the right in registration.

## **Article 187**

1. A party, whose products satisfy the conditions for the use of the geographical indication, shall have a right to use it in the course of trade. It may also request the Patent Office to be entered in the Register as a party authorised to use that indication.

2. The entry referred to in paragraph (1) shall be made subject to furnishing by the requesting party of a written confirmation issued by the holder of the right in registration to the effect that the products of the requesting party satisfy the conditions for the use of the geographical indication, or on the basis of a court decision.

3. The right holder referred to in paragraph (2) may also demand the party whose products fail or ceased to satisfy the requirements for the grant of a right in registration to be removed from the Register.

## **Article 188**

1. At the request of the holder of the right in registration, the conditions for the use of the geographical indication, such as the delimitation of the area to which the geographical indication relates, the conditions of the product manufacture, specific features or properties of the product or methods of inspection thereof, may be adjusted, if it is reasonable in the light of technological development or developments in product production.

2. Where the holder of the right in registration proves that the requested adjustment, referred to in paragraph (1), is not opposed by the parties appearing in the

Register as those authorised to use the indication, the Patent Office shall take a decision on the adjustment and make the relevant entry in the Register.

3. Where a party opposing the adjustment referred to in paragraph (1) submits, within a period of one month, a request to the Patent Office for recognising the requested adjustment as unreasonable, the matter at issue shall be referred for examination in litigation proceedings. Failing this, the Patent Office shall consider the opposition withdrawn and take the decision referred to in paragraph (2).

4. In cases of foreign geographical indications, the adjustment referred to in paragraph (1) may only be made on the basis of evidence produced by the holder of the right in registration to the effect that the relevant conditions for the use of the indication in the country of its origin have changed.

## **Article 189**

Subject to the conditions referred to in Article 176(2)-(4), the holder of the right in registration for a geographical indication may, by way of agreement, assign his right to another organisation or an agency. Entry in the Register of the above change in ownership shall be made on request.

## **Article 190**

Parties authorised to mark their products with a registered geographical indication may indicate that the indication has been registered by placing on the product the words “Registered geographical indication” or the letter “G” within a circle next to the indication.

## **Chapter 4**

### **Invalidation and Lapse**

### **of the Right in Registration**

### **for a Geographical Indication**



## **Article 191**

A right in registration for a geographical indication may be invalidated at the request of any party having a legitimate interest therein, if he is able to prove that the statutory requirements for the grant of that right have not been satisfied.

## **Article 192**

1. Subject to paragraph (3), any party having a legitimate interest may demand that a decision be made on the lapse of the right in registration for the geographical indication which ceased to satisfy the requirements for the grant of protection or has not been used for a period of five years and no serious reasons for non-use thereof exist.

2. The burden of proof that the geographical indication is used or that the justified reasons for non-use thereof exist shall be on the holder of the right in registration.

3. Paragraph (1) shall not apply to indications, the protection of which follows from an international agreement.

4. Use in the course of trade of the name of a region as a generic name for similar products may not constitute a ground for invalidation of the right in registration for that indication or for declaring the right lapsed.

5. A right in registration for a geographical indication shall also lapse on surrender of the right by the holder before the Patent Office, with the consent of the parties appearing in the Register as authorised to use the indication.

6. In the case referred to in paragraph (5), the Patent Office shall make a decision on the lapse of the right in registration.

## **Article 193**

The General Public Prosecutor of the Republic of Poland or the President of the Patent Office may, in the public interest, request that a right in registration for a geographical indication be invalidated or intervene in an invalidation action already pending.

#### **Article 194**

A right in registration for a geographical indication shall terminate on a date of the occurrence of the event, which is considered under this Law as giving rise to the lapse of the right in registration. The date of the termination of the right in registration shall be confirmed in a decision.

#### **Article 195**

Invalidation or lapse of a right in registration shall be recorded in the Register of Geographical Indications.

### **Title IV**

#### **Topographies of Integrated Circuits**

##### **Part I**

##### **Introductory Provisions**

#### **Article 196**

1. Any solution consisting of a three-dimensional arrangement of the elements, however expressed, at least one of which is an active element, and of all or some interconnections in an integrated circuit, shall be considered as a topography of an integrated circuit, hereinafter referred to as a “topography”.

2. An integrated circuit shall mean any three-dimensional product having one or more layers, composed of elements of semiconducting material forming a continuous

layer and of conducting interconnections and insulating spaces, inseparably interconnected, intended to perform electronic functions.

#### **Article 197**

1. For a topography a right in registration may be granted.
  
2. Subject to paragraphs (3) and (4), a right in registration may only be granted for a topography, if it is original.
  
3. A right in topography registration shall not be granted, if before it is applied for registration with the Patent Office it has been commercially exploited for more than two years.
  
4. A right in topography registration may not be granted, if the topography has not been commercially exploited within a period of 15 years from its fixation or encoding in any form.

#### **Article 198**

1. A topography shall be considered original if it is the result of its creator's own intellectual effort and is not commonplace at the time of its creation.
  
2. Where the topography consists of elements that are commonplace, a right in registration shall be granted only to the extent to which the combination of such elements is original.

#### **Article 199**

A right in registration shall not be granted for a topography, if it explicitly results from the function of an integrated circuit in which it is applied.

## **Article 200**

The right to topography registration shall belong to the creator, his successor in title or a person with whom the creator has concluded a contract of employment or another contract, or a person who assisted the creator in creating the topography. The provisions of Articles 11, 12, 20 and 21 shall apply accordingly.

## **Article 201**

The creator of a topography shall be entitled to remuneration for the exploitation of his topography by an entity. The provisions of Articles 22 and 23 shall apply accordingly.

## **Part II**

### **Filing and Processing of Topography Applications**

## **Article 202**

1. An application for topography registration shall contain:
  - (i) a request,
  - (ii) material identifying the topography, including the data necessary to clearly define the topography,
  - (iii) a statement as to the date of putting the topography into commercial exploitation, if it precedes the date of its filing for registration.
  
2. In the application referred to in paragraph (1), the applicant shall not be required to disclose the information, which constitute an industrial or trade secret, unless it is necessary to identify the topography.
  
3. One and the same topography application may relate to one solution only.

4. Where a topography application contains at least the request and a part, which appears to be the material identifying the topography, the application shall be deemed to have been filed.

### **Article 203**

1. The right in topography registration shall be obtained by the registration of the topography that is the subject of the application duly filed with the Patent Office.

2. The Patent Office shall make a decision on the grant of a right in registration, where in the course of checking the application as to the requirement referred to in paragraph (1) it establishes that nothing prevents the right in topography registration from being granted. Registration shall be subject to payment of a fee for first protection period.

3. Failing to pay the fee within the prescribed time limit, the Patent Office shall declare the decision on the grant of the right in registration lapsed.

### **Article 204**

The Patent Office shall make a decision on refusal to grant the right in registration, if it finds that the obstacles preventing the right from being granted are of such a nature that they can not be removed. The provision of Article 49(2) shall apply accordingly.

### **Article 205**

Grant of the right in topography registration shall be entered in the Register of Topographies of Integrated Circuits.

### **Article 206**

Grant of the right in registration shall be evidenced by the issue of a certificate of topography registration.

#### **Article 207**

1. Before a right in registration is granted, the Patent Office shall not disclose any information on the application to third parties without the applicant's consent.

2. The material identifying the topography shall not be disclosed without the right holder's consent even after the grant of the right in registration.

3. Paragraph (2) shall be without prejudice to the disclosure of the relevant documentation at the request of a court or the parties to litigation concerning the validity or infringement of the right granted.

#### **Article 208**

The owner of the right may indicate that his topography has been registered by adding the letter "T" in a circle on the topography or on the product embodying the protected topography.

#### **Article 209**

1. Subject to paragraph (2), the provisions of Articles: 31(4), 32, 36, 37, 39, 41, 42 and 46 shall apply accordingly to filing and processing of topography applications.

2. Any alterations made in the application in the course of its processing may not relate to the topography itself.

#### **Article 210**

The Prime Minister shall, by way of regulation, determine the detailed requirements to be satisfied by topography applications and the detailed rules and procedure applied in processing applications. The requirements to be satisfied by topography applications may not be determined in such a way as to encumber the applicant with excessive and unreasonable impediments.

### **Part III**

#### **Rights in Topography Registration**

##### **Article 211**

The right in registration shall confer the exclusive right to exploit the topography for profit or for professional purposes on the whole territory of the Republic of Poland.

##### **Article 212**

1. The right in registration shall be considered infringed by a party committing, without the right holder's consent, an act of:

- (i) reproduction of the whole or of a part of the protected topography, except for the reproduction of that of its part, which fails to satisfy the requirement of originality referred to in Article 198, or
- (ii) importation, selling or otherwise putting on the market of a copy of the protected topography, integrated circuits manufactured with the use of such copy or of the product embodying such integrated circuits.

2. Reproduction of a topography shall consist of its reproduction in an integrated circuit basing on the pattern, the documentation or analysis.

##### **Article 213**

The right in registration shall not be considered infringed by applying the topography of an integrated circuit in means of transport or their parts or accessories, temporarily located on the territory of the Republic of Poland, or in articles which are in transit through its territory.

## **Article 214**

The right in registration shall not be considered infringed by a party who, without the right holder's consent, reproduces the protected topography privately or solely for the purpose of evaluation, analysis, testing or teaching.

## **Article 215**

The right in registration shall not be considered infringed by a party who, in result of evaluation or analysis, has created a topography satisfying the criterion of originality, referred to in Article 198.

## **Article 216**

The right in registration shall not be considered infringed by the exploitation, to a necessary extent and on the basis of non-exclusivity, of the topography for national purposes, if it is necessary to prevent or eliminate a state of emergency regarding vital interests of the State, in particular in the sphere of security and public order. The provisions of Article 69(2)-(4) shall apply accordingly.

## **Article 217**

The right in topography registration shall not be considered infringed by an act of importation or putting on the market of the product embodying a topography unlawfully exploited by a person being in good faith. After having been informed that the topography is protected, he shall be entitled to continue the commercial exploitation of the topography only subject to the right holder's consent. The products stocked or ordered before the information has become known may be put on the market subject to payment to the right holder of the compensation amounting to a licence fee.

## **Article 218**

1. The right in registration shall not extend to acts involving copies of a protected topography, the integrated circuits manufactured by means of such copies, or the products embodying such integrated circuits, if such acts consist, in particular, of offering for sale or further commercialisation thereof, and such copies, circuits or products have been put on the market on the territory of the Republic of Poland by the right holder or with his consent.



2. The right in registration shall neither be consider infringed by an act of importation or other acts, referred to in paragraph (1) in respect of the copies of a protected topography, the integrated circuits manufactured by means of such copies, or the products embodying such integrated circuits, if they have earlier been put on the market on the territory of the European Economic Area by the right holder or with his consent.

### **Article 219**

1. The right holder may not enforce his rights in respect of another topography that is identical and has been created by a third party independently.

2. Where there are two topographies which are identical in whole or in part, a topography which might be a reproduction of the topography earlier applied for registration with the Patent Office or earlier put on the market shall be presumed to actually be the reproduction thereof.

### **Article 220**

Topography protection shall terminate 10 years from the end of the calendar year in which the topography or an integrated circuit embodying such topography was put on the market or from the end of the calendar year in which the topography was applied for registration with the Patent Office, whichever term expires earlier.

### **Article 221**

1. Subject to paragraph (2), the provisions of Articles: 67, 68, 72, 74-79, 81-90 and 92 shall apply accordingly to the right in topography registration.

2. The right in topography registration shall also terminate 15 years from its creation or fixing, if that period expires before the expiry of a period for which the right

in registration has been granted and the topography has not been exploited for commercial purposes during that time.

## **Title V**

### **Fees, Registers, Documents and Official Communications**

#### **Part I**

##### **Fees**

#### **Article 222**

1. The Patent Office shall charge single fees and renewal fees on account of granting protection for inventions, utility models, industrial designs, trademarks, geographical indications and topographies of integrated circuits.

2. The fees referred to in paragraph (1) shall constitute the income of the State budget.

3. The Council of Ministries shall, by way of regulation, determine the detailed rules of fixing and paying fees, and the amount thereof, while taking into account the division of protection term into one-year-, or more than one year- protection periods. Fees may not entail excessive and unreasonable restrictions on accessibility to procedures concerning the acquisition and maintenance of the protection.

#### **Article 223**

1. Single fees for applications, requests, declarations and for performing other acts provided for in this Law shall be payable in advance, unless this Law or the regulation referred to in Article 222(3) provides for payment of a fee at an invitation of the Patent Office within a prescribed time limit.

2. An application single fee shall be payable within one month from the date of delivery of the Patent Office's invitation.

3. Where the Patent Office's decision is reversed in result of a submitted request for re-examination of the matter, the request fee already paid shall be liable to reimbursement.

4. Failing to pay the fee referred to in paragraph (1) within the fixed time limit, the proceeding initiated on the basis of an application filed or a request submitted shall be discontinued or the act whose performance is conditional upon payment of a fee, shall be abandoned.

#### **Article 224**

1. A time limit for payment of a single protection fee or a fee for first protection period, specified in a decision on the grant of a patent, of a right of protection or of a right in registration, respectively, shall be three months from the date of service of the invitation. The applicant shall be allowed to pay, at the same time, fees for subsequent protection periods which have started to run or a fee for the maintenance of the protection for the periods which have started to run before that time limit.

2. Subject to paragraph (1), fees for subsequent protection periods shall be payable in advance, however not later than on a day of expiry of the preceding protection period.

3. The renewal fees referred to in paragraph (2) may be paid within one year before the date referred to in paragraph (2). The fees shall be liable to reimbursement, if before the said time limit the exclusive right has been invalidated or has lapsed. The fees paid for the lapsed protection periods and a fee for the running protection period shall not be liable to reimbursement.

4. The fees referred to in paragraph (2) may also be paid within six months after the expiry of the time limit referred to in paragraph (2), a surcharge amounting to 30% of

the due fee being payable at the same time. The time limit in question shall not be restorable.

5. Where a patent of addition is granted, a single fee shall be payable for the protection of the invention.

6. Where a patent of addition becomes a patent, renewal fees shall be payable starting from a protection period following the termination of the basic patent, at the amount as would be due for that period and subsequent periods of protection of the invention that is the subject matter of the basic patent.

7. The provisions of paragraphs (2)-(4) shall apply accordingly, subject to paragraph (8), to renewal fees for the protection of an invention under a supplementary protection right.

8. Where a decision on the grant of a supplementary protection right is made and the term for which the basic patent is about to expire or has expired, a due protection fee may be paid within three months from the date on which the decision has been served upon.

## **Article 225**

1. Subject to paragraph (3), the time limit for payment of a fee, referred to in Article 223(2) or Article 224(1), may, at the request of the applicant, be restored, if within two months from the date, on which the reason for failure to observe the time limit ceased to exist, however not later than within six months from the date on which the time limit expired, he provides a plausible explanation that the non-observance has been without fault on his part. Submission of the request shall be subject to payment, at the same time, of the overdue fee.

2. The time limit for submission of the request referred to in paragraph (1) shall not be restorable.

3. Where a decision on discontinuance of the proceeding has been made on the ground of non-payment of the fee referred to in Article 223(2), or a decision on the lapse of the decision on the grant of a patent, of a right of protection or a right in registration, respectively, has been made on the ground of non-payment of the fee referred to in Article 224(1), the said decision may be reversed at the request of the applicant for re-examination of the matter, in which he provides a plausible explanation that the non-observance has been without fault on his part, and subject to payment, at the same time, of the overdue fee.

4. Paragraphs (1)-(3) shall apply accordingly in the case of non-payment, within the time limit referred to in Article 224(1), second sentence, of the fees for subsequent protection periods which have started to run or a fee for the maintenance of the protection for the periods which have started to run before that time limit.

## **Article 226**

1. Where an applicant proves his incapability of paying a fee for a patent or utility model application at its full amount, the Patent Office shall release him from that fee in part. The remaining amount of the fee may not be less than 30% of the fee as due.

2. Where a requesting party proves its incapability of paying a fee, at its full amount, for a request for making a decision in litigation proceedings or for a request for re-examination of the matter, the Patent Office shall release that party from that fee in part or in whole.

3. Paragraph (2) shall also apply to renewal fees for the protection of inventions or utility models and to single fees for the protection of inventions being the subject matter of patents of addition. This shall not apply to fees for periods longer than ten years from the filing date.

4. At the justified applicant's request submitted before the expiry of the fixed time limit, a time limit for payment of the fees referred to in Article 224(1) may be postponed by the Patent Office, however of no more than six months. The postponed time limit shall not be restorable.

5. In the matters referred to in paragraphs (1)-(4), the Patent Office shall issue orders. Where release or partial release from the payment of a fee is refused, a new time limit for payment shall be fixed.

6. A request for re-examination of the matter submitted in consequence of the order referred to in paragraph (5) shall not be charged with any fee.

### **Article 227**

The Patent Office shall charge a single fee for the publication in the “*Wiadomości Urzędu Patentowego*” of a communication on the grant of a patent, a supplementary protection right, a right of protection, a right in registration and for the publication of those parts of the application, which are mandatory for publication, as well as for the issue of a document certifying the grant of protection (publication fee). The applicant shall be obliged to pay the fee after having been served with the decision on grant, within three months from the date of service of the invitation to pay it. In that case, the provision of Article 223(4) shall not apply.

## **Part II**

### **Registers and Documents**

### **Article 228**

1. For the purpose of making entries of granted patents, supplementary protection rights, rights of protection and rights in registration, the Patent Office shall be keeping:

- (i) the Patent Register,
- (ii) the Register of Utility Models,
- (iii) the Register of Industrial Designs,
- (iv) the Trademark Register,
- (v) the Register of Geographical Indications,
- (vi) the Register of Topographies of Integrated Circuits

2. When justified by a necessity of making separate entries, the Patent Office shall be keeping accessory registers of rights granted with effect on the territory of the Republic of Poland, registered in an international authority under an international agreement.

3. The registers referred to in paragraphs (1) and (2) shall be open to the public.

4. Entries in the registers, referred to in paragraph (1) shall be presumed to be truthful and known to the public.

#### **Article 229**

1. In matters in which entries in a register are conditional upon submission of a request, the entry shall be made by virtue of a decision.

2. When examining the request referred to in paragraph (1), the Patent Office shall investigate whether submitted documents, supposed to provide grounds for taking a decision on entry in a register, are in accordance with this Law and satisfy the effective provisions as to form.

3. The entries referred to in paragraph (1) shall not be binding on an authority whose responsibilities, under the provisions of law, include deciding on a document founding the decision on entry in a register or in a case, the outcome of which may affect a decision of the Patent Office on entry in a register.

#### **Article 230**

The Prime Minister shall, by way of regulation, determine the detailed rules which govern the keeping of the Registers and the conditions and manner of making entries therein, including, in particular, the principles and manner which govern the inspection of the Registers, and of making excerpts therefrom, as well as the matters for which the accessory registers referred to in Article 228(3) shall be kept.

## **Article 231**

1. Letters patents, supplementary protection certificates, certificates of protection, certificates of registration and priority documents shall bear a round seal with the image of a crowned eagle and the inscription “The Patent Office of the Republic of Poland” within the rim.

2. In case of loss or destruction of the document referred to in paragraph (1), the Patent Office shall, at the request of the right holder and subject to payment of a due single fee, issue a duplicate thereof.

## **Part III**

### **Official Communications**

## **Article 232**

1. Granted patents, supplementary protection rights, rights of protection and rights in registration shall be communicated in the official gazette “*Wiadomości Urzędu Patentowego*”.

2. Subject to paragraph (3), entries and changes concerning granted rights, made in the Registers, shall likewise be communicated in “*Wiadomości Urzędu Patentowego*”.

3. Lapse of a patent, of a supplementary protection right, of a right of protection or of a right in registration on expiry of a period for which it was granted, shall not be communicated.

## **Article 233**

The following shall also be communicated in “*Wiadomości Urzędu Patentowego*”: decisions on refusal to grant a patent, or a supplementary protection right,



or a right of protection for a utility model or for a trademark; on discontinuance of proceedings or on the lapse of decisions on the grant of a patent, or a supplementary protection right, or a right of protection; requests for utility model protection (Article 38); decisions taken in respect of inventions, utility models and trademarks, the applications of which were published by the Patent Office in accordance with this Law.

#### **Article 233<sup>1</sup>**

Communications on filing patent, utility model and trademark applications shall be published in “*Biuletyn Urzędu Patentowego*”.

#### **Article 234**

In “*Wiadomości Urzędu Patentowego*” communications other than those specified in Articles 232, 233 and 233<sup>1</sup> provided for by this Law, official acts and announcements shall also be published.

### **Title VI**

#### **A Party, Representatives, Time Limits, Appeal Measures and Information on application in Filing and Registration Proceedings**

#### **Article 235**

The applicant shall be a party to the proceedings before the Patent Office concerning grant of a patent, a right of protection or a right in registration.

#### **Article 236**

1. Except as provided for in paragraph (2), in proceedings before the Patent Office in matters relating to the filing and processing of applications and maintenance of the protection of inventions, utility models, industrial designs, trademarks, geographical indications and topographies of integrated circuits, only a patent agent may act as a representative of a party to a proceeding.

2. Subject to paragraph (3), a natural person may also be represented by a joint right holder or parents, brothers, sisters, descendants of the party or persons in the relation-by-adoption with the party.

3. In the matters referred to in paragraph (1), any persons not having their domicile or seat in Poland may only act when represented by a patent agent.

### **Article 237**

1. In the performance of one act a party may be represented by one natural person only.

2. A power of attorney shall be in writing and shall be included in the files on performance of first legal act.

3. Where the power of attorney covers two or more cases, it shall be included in the files of that of the cases, in respect of which the first act is performed by the representative. When acting in other cases covered by the power of attorneys, the representative shall be required to furnish a certified copy of the power of attorney.

4. A patent agent shall be allowed to certify himself a copy of the power of attorney granted to him.

5. Failing to pay a due stamp duty for the power of attorney, the Patent Office shall invite the representative to make relevant payment and in case it should not be made, it shall additionally invite the party to confirm, within the fixed time limit, the acts performed by the representative. Failing to observe the fixed time limit, the provision of Article 223(4) shall apply accordingly.

### **Article 238**

1. Where another representative has been appointed by a party in the case, in which the first representative has already acted within the same scope of the power of attorney, the first representation shall be deemed to have been withdrawn.

2. In the case of power of attorney covering more than one person appointed to perform the same acts, that from among these persons who has performed an act and furnished the power of attorney for inclusion in the files, shall be considered as the representative. In the case of an act being performed by another person mentioned in the power of attorney, paragraph (1) and the provision of Article 237(3) shall apply accordingly.

### **Article 239**

Where a party authorises an organisation, whose activities include rendering professional services in representation, to act in proceedings before the Patent Office, and the head of that organisation furnishes a statement whereby he appoints as the authorised representative one of the patent agents practising therein, such statement shall be considered to constitute the power of attorney.

### **Article 240**

1. Except for the persons referred to in Article 236(2), a representative shall be authorised to appoint a substitute (substitution).

2. Authorisation by another joint right holder shall not be required for performing conservatory action.

### **Article 241**

1. Where two or more persons are parties to a proceeding and no representative has been appointed, the persons concerned shall be required to indicate one address for service. Failing to indicate such address, the address of the person named first in the application or in another document, on the basis of which the proceeding is instituted, shall be deemed to be that address.

2. At a party's request, the Patent Office shall also send letters addressed according to paragraph (1) to the addresses additionally indicated by that party. This provision shall also apply accordingly, where only one person who has appointed a representative is a party to the proceeding.

## **Article 242**

1. Unless otherwise stipulated in this Law, in the course of proceedings the Patent Office shall fix the following time limits for performing specified acts by a party:

- (i) of one month, where the party has its domicile or seat on the territory of the Republic of Poland,
- (ii) of two months, where the party has its domicile or seat in another country.

2. When reasonable, the Patent Office shall fix a time limit longer than that referred to in paragraph (1), however of no more than three months.

3. Any act may be performed within two months after the expiry of a time limit fixed in accordance with paragraph (1) or (2), if before its expiry the Patent Office is notified in writing by the party on the reasons of non-observance of that time limit.

## **Article 243**

1. Unless otherwise stipulated in this Law, where in the course of proceedings a time limit to perform an act requisite, under this Law, for continuance of the proceeding has not been observed, the Patent Office may, at the party's request, restore the time limit, provided that the party provides a plausible explanation that non-observance was without fault on its part.

2. Subject to paragraph (4), the request referred to in paragraph (1) shall be submitted to the Patent Office within two months from the date on which the reason for non-observance has ceased to exist, however not later than within six months from the date of the expiry of that time limit. At the same time, the requesting party shall be required to perform the act in respect of which the time limit was fixed.

3. A time limit to submit the request referred to in paragraph (2) shall not be restorable.

4. Where a decision has been taken on discontinuance of the proceeding for the reason of failure to observe a time limit for performance of a specified act, that decision, at the party's request for re-examination of the matter, may be reversed, provided that the party provides in the request a plausible explanation that the non-observance was without fault on its part, while performing, at the same time, the act in respect of which the time limit was fixed.

5. Where the time limit for filing an application for the purpose of preserving the right of earlier priority or the time limit for furnishing a document expires on a day on which the Patent Office is closed to the public, the application or the document received on the first subsequent day on which the Patent Office is open to the public shall be deemed to have been received within the time limit concerned.

6. In respect of time limits, to which paragraph (1) is not applicable, and the non-observance of which has been caused by exceptional circumstances, the provisions on suspension of the course of negative prescription caused by acts of God shall apply accordingly. In such cases, the Patent Office shall give orders after having been furnished with relevant evidence by the interested party.

7. Notwithstanding the provisions of paragraphs (5) and (6), the Patent Office shall secure the reception at any time of day of letters delivered by interested persons.

## **Article 244**

1. Decisions of the Patent Office shall be liable to a party's request for re-examination of the matter within the meaning of the Code of Administrative Procedure.

1<sup>1</sup>. Subject to paragraphs 1<sup>2</sup> to 1<sup>4</sup>, the provisions of the Code of Administrative Procedure governing deciding on appeals from decisions shall apply accordingly to proceedings on re-examination of the matter.

1<sup>2</sup>. Requests for re-examination of the matter shall require to be substantiated.

1<sup>3</sup>. In the case referred to in Article 89§2 of the Code of Administrative Procedure a hearing shall also be conducted at the applicant's request.

1<sup>4</sup>. The matter shall be re-examined by an expert appointed by the President of the Patent Office.

2. *(deleted)*

3. Paragraphs (1) and (1<sup>1</sup>) to (1<sup>4</sup>) shall apply accordingly to orders.

4. A time limit for submitting a request for re-examination of the matter, in which a decision has been made or an order issued, shall be, accordingly, two months and one month from a day on which the party has been served with the decision or the order.

5. Before the expiry of the time limit for submitting the request for re-examination of the matter, the decision shall not be liable to execution.

## **Article 245**

1. Following the re-examination of the matter, the Patent Office shall take a decision in which it either maintains the appealed decision or reverts it in whole or in part and decides on the merits.

2. Where the request is disregarded and the appealed decision maintained, the time limit to perform the act fixed in the appealed decision shall start to run again.

3. Paragraphs (1) and (2) shall apply accordingly in deciding on the request for re-examination of the matter, in respect of which an order has been issued.

## **Article 246**

1. Within six months from the publication in “*Wiadomości Urzędu Patentowego*” of the mention of the grant of a title of protection, any person may give reasoned notice of opposition to a final decision of the Patent Office on the grant of a patent, a right of protection or a right in registration.

2. The opposition referred to in paragraph (1) may be filed on the same grounds, on which a patent, a right of protection or a right in registration may be invalidated.

## **Article 247**

1. The Patent Office shall immediately communicate the opposition referred to in Article 246 to the right holder and invite him to file his observations within a fixed time limit.

2. Where, following the communication of the Patent Office referred to in paragraph (1), the right holder claims the opposition to be unjustified, the case shall be submitted for examination in litigation proceedings. Otherwise, the Patent Office shall decide on reversal of the decision on the grant of a patent, a right of protection or a right in registration, and discontinue the proceeding.

## **Article 248**

Decisions made and orders issued by the Patent Office shall be subject to complaint to the administrative courts.

## **Article 249**

1. The President of the Patent Office shall appoint an expert for examining whether or not the complaint lodged is justified.

2. Following the examination of the complaint the Patent Office shall either admit the complaint in whole or convey the reply to the complaint together with the files of the case to the administrative court.

## **Article 250**

In consequence of the complaint referred to in Article 248, execution of the decision or of the order may be suspended by the President of the Patent Office also where the suspension has not taken place by virtue of law or ordered by the administrative court.

## **Article 251**

1. The Patent Office shall provide information on applications concerning inventions, utility models, industrial designs, trademarks, geographical indications or topographies of integrated circuits and shall make available application files, at each stage of proceedings, to:

- (i) applicants and their representatives,
- (ii) prosecution agencies and courts, on account of cases handled by them,
- (iii) other persons, with the applicant's consent given in writing.

2. After the expiry of the time limits within which information on the applications referred to in paragraph (1) may not be disclosed, the Patent Office may, at the request of a person having a legitimate interest, make accessible to that person the documents included in the application files.

3. Any disclosure of any confidential information on an application and any act of making application files accessible for inspection shall be annotated in the application files concerned.

4. Paragraphs (1)-(3) shall not apply to applications concerning secret inventions and secret utility models.



5. Paragraphs (2) and (3) shall apply to applications concerning topographies of integrated circuits, subject to the reservations referred to in Article 207(2) and (3).

## **Article 252**

Subject to Article 253, the provisions of the Code of Administrative Procedure shall apply accordingly to cases not regulated by this Law.

## **Article 253**

1. The provisions of the Code of Administrative Procedure governing time limits for settling cases shall not apply to the processing of applications filed to obtain a patent, a supplementary protection right, a right of protection or a right in registration.

2. The provisions of the Code of Administrative Procedure governing resumption of proceedings or ascertainment of non-validity of a decision, shall not apply if the grounds for resumption of a proceeding or ascertainment of non-validity of a decision may be invoked in a dispute concerning invalidation of a granted patent, a supplementary protection right, a right of protection or a right in registration.

## **Article 254**

Any final decision of the Patent Office, which terminates the proceedings and grossly violates law may be subject to complaint lodged by the President of the Patent Office, the General Prosecutor of the Republic of Poland and the Ombudsman to the administrative court within a period of six months from the party being served with the decision.

## **Title VII**

### **Litigation Procedure**

## Article 255

1. The Patent Office shall make a decision in litigation procedure:

- (i) on the invalidation of a patent, a supplementary protection right, a right of protection or a right in registration,
- (ii) on the lapse of a patent for an invention concerning a biological material or for the use thereof in the case referred to in Article 90(1)(iv),
- (ii)<sup>1</sup> on the lapse of a supplementary protection right in the cases referred to in Article 75<sup>6</sup>(3),
- (iii) on the lapse of a right of protection for a trademark in the cases referred to in Article 169,
- (iv) on the lapse of a right in registration for a geographical indication in the case referred to in Article 192(1),
- (v) on the lapse of a right in topography registration in the case referred to in Article 221(2),
- (vi) on the grant of a compulsory licence for exploiting an invention, a utility model or a topography,
- (vii) on the change of a decision on the grant of a compulsory licence,
- (viii) on the ascertainment that a request for the amendment of the conditions for the use of a geographical indication in the case referred to in Article 188(3), is unjustified,
- (ix) on the invalidation of a patent, a right of protection or a right in registration in consequence of an opposition filed, which is claimed by the right holder to be unjustified.

2. The cases referred to in paragraph (1) shall be heard by boards adjudicating in litigious cases.

3. The provisions of the Code of Administrative Procedure governing time limits for settling cases shall not apply to cases heard by the Patent Office in litigation procedure. The Patent Office shall make all-out efforts to settle the case within six months from the submission of the request.

4. The Patent Office shall settle cases in litigation procedure within the scope of the request and shall be bound by the legal ground invoked by the requesting party.

### **Article 255<sup>1</sup>**

1. Litigation proceedings in the cases referred to in Article 255(1)(i)-(viii) shall be initiated at a written request.

2. A request for initiation of a proceeding shall be subject to payment of a fee.

3. A request shall contain:

- (i) identification of the parties and their addresses
- (ii) brief presentation of the case
- (iii) clear definition of the decision sought
- (iv) reference to the legal ground
- (v) indication of evidence
- (vi) signature of the requesting party and a date

4. The request shall be accompanied by:

- (i) a power of attorney, where the request is submitted by the representative

(ii) copies of the request in a number corresponding to the number of the parties to the litigation proceeding

(iii) a receipt for the payment of the fee referred to in paragraph (2).

5. The Patent Office shall check whether the request for initiation of a litigation proceeding satisfies the formal requirements referred to in paragraphs (3) and (4).

6. Where the request fails to satisfy the formal requirements, the Patent Office shall invite the requesting party to remove the defects, under pain of discontinuance of the proceeding, within 30 days.

### **Article 255<sup>2</sup>**

1. The Patent Office shall serve the copies of the request upon the parties to the litigation proceeding and fix the term for submitting a written reply to the request.

2. The party invited to reply to the request shall enclose the copies of the reply in a number corresponding to the number of the parties to the litigation proceeding.

### **Article 255<sup>3</sup>**

1. On expiry of the term fixed for submitting by the party a reply to the request the Patent Office shall fix a date for a hearing and communicate it to the parties or their representatives while serving on them, at the same time, a copy of the reply to the request, if any.

2. In the cases mentioned in Articles 255<sup>1</sup>(6), 255<sup>4</sup>, 255<sup>5</sup>(2), 255<sup>6</sup>(3) and in case of the time limit specified in Article 255<sup>1</sup>(6) being restored, the Patent Office may chose to hear the case in camera.

3. In the communication on the hearing the date, venue and the matter at issue shall be specified.

4. The communication on the hearing shall be served upon the parties no later than seven days before the fixed date.

#### **Article 255<sup>4</sup>**

1. Where the Patent Office finds its incompetence in deciding on the request in litigation proceedings, the Office shall conclude by way of order.

2. Where the requesting party withdraws its request before the hearing, the Patent Office shall decide to discontinue the proceeding.

#### **Article 255<sup>5</sup>**

1. The hearing shall be held public, unless a litigation proceeding concerns a secret invention or a secret utility model.

2. If for the determination of the case the information legally protected under the separate provisions has to be invoked by the parties, a decision may be taken to hear the case, in whole or partially, at a non-public sitting. The decision can not exclude the parties from being present at the hearing.

#### **Article 255<sup>6</sup>**

1. The hearing shall be recorded and the minutes of the court session shall be signed by the presiding judge and the recording clerk.

2. The minutes shall contain:

(i) indication of the adjudicating body, the venue and date of the session, the first names and family names of the members of the adjudicating panel, of the recording clerk, the parties, their representatives and statutory representatives, as well as the identification of the case and the mention of the secrecy of the hearing;

(ii) proceedings of the hearing, in particular the conclusions and statements of the parties, proceedings of the hearing of evidence, listing of the rulings made and orders issued at the session together with the mention of their pronouncement; the conclusions and statements of the parties may be replaced in the minutes by references to the preparatory writings;

(iii) actions taken by the parties, in particular conciliation, admission of the claim, withdrawal, modification, broadening or restriction of the request.

3. The parties may, however no later than at the next session or, if a decision has been passed – within 30 days from its passing, request the minutes to be rectified or completed.

#### **Article 255<sup>7</sup>**

1. On conclusion of the litigation proceeding the Patent Office shall pass a decision.
2. The decision shall be taken by a simple majority of votes.
3. A member of the adjudicating panel disagreeing with the determination of the case may submit a dissenting opinion together with a written substantiation.
4. Next to the signature put on the decision a note on the submission of the dissenting opinion shall be made.
5. The dissenting opinion shall not be made public.

## **Article 255<sup>8</sup>**

1. A decisions shall contain:

- (i) indication of the adjudicating body;
- (ii) the date of the decision;
- (iii) the first names and family names of the members of the adjudicating panel and of the recording clerk;
- (iv) identification of the parties;
- (v) indication of the subject of the case and of its determination;
- (vi) reference to the legal ground for the determination;
- (vii) decision in respect of the court costs;
- (viii) factual and legal substantiation;
- (ix) instruction on the appealing procedure;
- (x) the signatures of the members of the adjudicating panel.

2. Written substantiation of the decision shall be drawn up *ex officio* within 30 days from the date of its pronouncement. The substantiation shall be signed by the chairman and the member of the adjudicative panel that has drawn up the substantiation. A copy of the decision and the substantiation shall be served upon the parties.

## **Article 255<sup>9</sup>**

1. Subject to Article 255<sup>10</sup>(1), decisions of the Patent Office shall be subject to pronouncement.

2. The decision shall be pronounced immediately after the hearing.

3. Pronouncement of the decision may be delayed of up to two weeks, this, including the date and venue of the pronouncement of the decision, being announced by the chairman of the adjudicating panel.

#### **Article 255<sup>10</sup>**

1. Orders issued and decisions passed in the closed hearing shall not be announced.

2. The provision of Article 255<sup>8</sup>(2) shall apply accordingly to the orders and decisions referred to in paragraph (1) above.

#### **Article 255<sup>11</sup>**

The provisions of Articles 242 and 243 shall apply accordingly to litigation proceedings before the Patent Office.

#### **Article 255<sup>12</sup>**

The provisions of Articles 255<sup>1</sup> to 255<sup>11</sup> shall apply accordingly to the cases referred to in Article 255(1)(ix), except for the provisions governing requests for initiation of a litigation proceeding.

#### **Article 256**

1. The provisions of the Code of Administrative Procedure shall apply accordingly to litigation procedure before the Patent Office in cases not regulated by this Law..

2. To costs of proceedings the provisions applied in civil law proceedings shall apply accordingly.



3. The provisions of the Code of Administrative Procedure governing re-examination, at a party's request, of cases, in which decisions not liable to appeal were taken, shall not apply to decisions on merits taken after hearing.

3<sup>1</sup>. The cases referred to in Article 255<sup>3</sup>(2) may be requested to be re-adjudicated. A time limit for submitting a request shall be, in case of a decision made – two months and in case of an order issued – one month from the date of the decision or the order being served upon the party.

4. *(repealed)*

#### **Article 257**

Decisions made or orders issued by the Patent Office in the cases referred to in Article 255, shall be liable to complaint lodged to the administrative court.

#### **Article 258**

The provision of Article 254 shall apply accordingly to final decisions of the Patent Office made in the cases referred to in Article 255.

### **Title VIII**

#### **Patent Office**

##### **Part I**

#### **Responsibilities and Organisation**

##### **of the Patent Office**

#### **Article 259**

Patent Office of the Republic of Poland is a central government agency responsible in industrial property matters.

## **Article 260**

1. Patent Office shall be subordinated to the Council of Ministers. Supervision over the Patent Office's activities shall be exercised by a minister competent in economy.

2. The Prime Minister shall, by way of regulation, on a motion of a minister competent in economy, grant statutes to the Patent Office and determine therein, in particular, the organisation, structure and rules of administration of the Office, as well as the allocation of responsibilities, while taking into account the status of experts, officers of civil service and of other employees.

## **Article 261**

1. The Patent Office shall perform its responsibilities in the industrial property matters specified in this Law, in separate regulations and in international agreements.

2. The responsibilities of the Patent Office shall, in particular, include:

- (i) receiving and examination of applications seeking protection for inventions, utility models, industrial designs, topographies of integrated circuits, trademarks and geographical indications,
- (ii) deciding in matters related to granting patents and supplementary protection rights for inventions, rights of protection for utility models and trademarks, as well as rights in registration for industrial designs, geographical indications and topographies of integrated circuits.
- (iii) adjudicating cases in litigation proceedings to the extent as specified by this Law,
- (iv) keeping the Registers referred to in Article 228,
- (v) publishing of an official gazette titled "*Wiadomości Urzędu Patentowego*",
- (v)<sup>1</sup> publishing of "*Biuletyn Urzędu Patentowego*"

- (vi) participating in activities of international bodies on account of the international agreements in the field of industrial property concluded by the Republic of Poland, in particular the Paris Convention for the Protection of Industrial Property,
- (vii) keeping of the centralised collection of Polish and foreign patent specifications.

3. When performing its responsibilities, in particular tasks relating to international co-operation, as well as in the course of preparation of drafts of regulations governing industrial property, the Patent Office shall act in agreement and co-operation with interested central and local government agencies.

#### **Article 262**

The Council of Ministers shall, by way of regulation, determine the detailed scope of activity of the Patent Office, taking, in particular, into account the Office's tasks and responsibilities, as well as the principles and forms of collaboration of the Office with other central and local government agencies, social organisations and trade unions in the matters falling within its responsibilities.

#### **Article 263**

1. The Office shall be headed by the President of the Patent Office, whose responsibility is to manage the Office and, subject to Article 264(2), represent the Office in outside relations, as well as to determine in detail its internal structure and the scope of responsibilities of its individual organisational units.

2. The President of the Patent Office shall be appointed and recalled by the Prime Minister on a motion of a minister competent in economy.

3. Deputies of the President of the Patent Office shall be appointed and recalled by the Prime Minister, on a motion of the President of the Patent Office.

#### **Article 264**

1. Experts appointed by the President of the Patent Office shall be responsible for deciding in the cases referred to in Article 261(2)(ii) and (iii) and in matters relating to making entries in the Registers.

2. An expert shall represent the Patent Office in proceedings before the administrative court, referred to in Articles 248 and 257.

3. The expert, referred to in paragraph (1), may be entrusted with additional powers, such as: directing, co-ordinating or supervising.

4. The additional powers, referred to in paragraph (3), may be entrusted for an unlimited period of time or for a period contracted for the performance of a given task.

## **Article 265**

1. Experts shall co-administer the Patent Office through the Board of Experts, which constitutes the experts' general assembly.

2. The Board of Experts shall appoint the Spokesman for the Interests of the Profession, who represents the experts before government and administration bodies in any matters involving their work.

3. The following shall be the Board's responsibilities:

- (i) making proposals and giving opinions on tasks to be carried out in processing applications filed and advising on means to be applied for carrying them out,
- (ii) establishing the principles of awarding experts from the award fund created under Article 271(3),
- (iii) giving opinions on problems incidental to the course of deciding cases, in particular as to inconsistencies identified in the decisions taken, and making respective proposals,

- (iv) giving opinions on other questions put forward by the President of the Patent Office or by the Spokesman for the Interests of the Profession.

4. Subject to paragraph (5), the Board of Experts shall be convened at least once a year by the President of the Patent Office, who chairs its meetings. The Board of Experts may also be convened at any time by the Spokesman for the Interests of the Profession for the presentation of a matter that needs to be consulted with the Board.

5. The Board of Experts may also debate in sections in which experts are grouped depending on the subject matter and problem involved and according to the tasks performed. Debates in a section may be chaired by the President of the Patent Office, a Deputy President or an expert, who has been assigned an executive duty under Article 264(3).

6. The President of the Patent Office shall make division into sections and appoint chairmen of works in sections.

## **Article 265<sup>1</sup>**

The employees of the Patent Office on posts of officials, except for experts, assistant experts and candidates for experts, shall be members of the corps of civil servants.

## **Part 2**

### **Experts, Assistant Experts and Candidates for Experts**

## **Article 266**

1. Subject to paragraph (2), only a person who holds a university degree and is graduated from a faculty enabling him/her carrying out the expert's duties, who completed an expert's practical training, hereinafter referred to as the "expert's training" and served his/her apprenticeship as an assistant expert, may be admitted as an expert.

2. Any person:

- (i) being a Polish national and enjoying full civic rights,
- (ii) having a record clean of any punishment for an offence committed intentionally,
- (iii) having command of at least one foreign language to an extent and degree as necessary for carrying out expert's duties, including those arising out from international agreements,
- (iv) being of unimpeachable character,
- (v) having a state of health and predisposition making him/her capable of being assigned expert's duties,

shall be eligible for being an expert.

3. A candidate for an expert who is required to have command of more than one foreign languages, may be released from the command of one of those languages, provided that he/she makes up the deficiency concerned while undergoing the expert's training.

## **Article 267**

1. The President of the Patent Office shall organise recruitment for expert's training by placing an announcement in a publicly available place in the Patent Office's house and by publishing it in the official gazette "*Wiadomości Urzędu Patentowego*".

2. The President of the Patent Office shall carry out qualifying appraisal. Candidates shall be expected to hold university education and to satisfy the requirements mentioned in Article 266(2) and (3).

3. The expert's training shall last three years; when reasonable, it may, at the request of a candidate, be shortened to up to one and a half-year.

4. An employment relationship of a candidate for an expert shall be established by the President of the Patent Office in a form of a contract of employment for an indefinite period.

5. A candidate may be assigned performance of certain acts associated with the decision-making process, however without a right to make a decision.

6. The expert's training shall be completed with an examination. The failed examination may be re-sat only once, not earlier than six months and not later than one year after the date of the first sitting for the examination.

7. An examination shall be conducted by an examination board set out by the President of the Patent Office. Participation in the commission's works shall be subject to remuneration.

8. Failure to sit for an examination without giving reasons or failure to pass the examination for the second time shall result in the dissolution by the Patent Office, at prior notice, of a contract of employment with a candidate.

9. A candidate shall be liable to disciplinary responsibility for professional wrongdoing. Article 273 shall apply accordingly to disciplinary responsibility.

## **Article 268**

1. After the pass of the examination, a candidate shall be assigned duties of an assistant expert for a period of not less than two years.

2. The assistant expert shall be assigned performance of the expert's work, which shall be subject to assessment made according to the principles specified in the regulation referred to in paragraph (8).

3. Where the assessment of the assistant expert's work is positive, the assistant expert shall be admitted as an expert.

4. On admittance, the expert shall take an oath before the President of the Patent Office, the form of which is the following: "I hereby swear to conscientiously perform the expert duties assigned to me, to decide in all fairness and respect for law, to keep state and public service secrets, and to follow in conduct the principles of dignity and honesty."

5. The oath shall not be taken again, where an expert takes on another expert's post.

6. Unless otherwise stipulated in this Law, the provisions of this Law applicable to experts shall apply accordingly to assistant experts.

7. The President of the Patent Office may recall an assistant expert from his/her post, if after two years of holding the assistant expert's post he/she is not appointed to an expert's post. The recall shall equal the termination of the employment contract.

8. The Prime Minister shall, by way of regulation, determine the detailed principles, extent and procedure of undergoing the expert's training and apprenticeship, and of passing examinations, including remunerating of persons conducting an examination.

## **Article 269**

1. When deciding cases, experts shall only be amenable to law.

2. To the extent as determined in paragraph (1), the provisions of other statutes on obligation to respect superior's service instructions, as well as the provisions providing for periodic or incidental assessment of employee's performance of his/her duties, shall not apply to experts.



3. When deciding in a case, the expert shall be obliged to follow interpretation instructions prescribed in general guidelines of the President of the Patent Office, issued in accordance with the procedure provided for in paragraphs (4) and (5).

4. The general guidelines referred to in paragraph (3) shall be issued by the President of the Patent Office after having consulted or at the request of the Board of Experts.

5. The President's general guidelines, referred to in paragraph (3), shall be given to public notice.

6. The President's general guidelines, referred to in paragraph (3), shall only be binding on experts in deciding cases and may not be referred to as a legal basis for a decision taken or an order issued.

7. On the principles as laid down in separate provisions, experts shall enjoy the protection as provided to public functionaries.

8. Direct supervision over the work of organisational units, within which experts perform their duties in deciding cases, shall be executed by the President of the Patent Office or a Deputy President authorised by him. The supervision shall not be executable in respect of a decision-making process.

## **Article 270**

1. The expert shall be bound to behave in accordance with the oath taken, in particular:

- (i) to observe the Constitution of the Republic of Poland and other laws and regulations,

- (ii) to observe, in decision-making process, the general guidelines of the President of the Patent Office, referred to in Article 269(3),
- (iii) to perform his/her duties honestly, fairly, efficiently and punctually,
- (iv) to keep state and service secrets,
- (v) to behave with dignity at the Office and in outside relations.

2. The expert may not be involved in establishing of trade unions or be member thereof. Upon his/her appointment to an expert's post, expert's membership in trade unions shall terminate by virtue of law.

3. The expert shall not be allowed to take on another employment without the consent of the President of the Patent Office, or to perform activities or works, which are contrary to his/her expert's duties or impair confidence therein.

4. To the extent as is decided by the expert, the expert may not act in the capacity of an expert appointed by the court.

5. The provisions governing restrictions on running business activity by persons performing public functions in part relating to civil servants members of civil service acting as managers, shall apply to experts.

6. At a justified written invitation of the President of the Patent Office, an expert shall be obliged to submit, within one month, a medical report established by an authorised physician, in confirmation of the expert's physical and mental capabilities to continue the work on his/her post.

7. When reasonable, an expert may be employed on part-time basis.

8. *(repealed)*

## **Article 271**

1. The expert's salary shall consist of the basic salary as appointed to a post held by the expert and a seniority allowance for continuing service on that post, plus, if the expert has been assigned an additional function, an allowance for performing that function. The amount of the salary and of the allowances shall be determined by means of multipliers corresponding to multiple anticipated medium salary in organisations remunerated from the state budget.

2. An expert shall be entitled to an extra salary payable once a year to employees of agencies remunerated from the state budget, at the amount and under the conditions laid down in separate provisions.

3. An award fund intended for awarding experts, assistant experts and candidates for experts for particular achievements in their work shall be established at the amount of 3% of the planned funds for their salaries. The amount of the deduction for the award fund may be increased by the President of the Patent Office within the amount of the wage fund held.

4. The provisions of the Act on civil service in part relating to the grant of anniversary awards and single compensations payable to an employee being pensioned for disability to work or retired on a pension shall apply accordingly to experts.

5. The Prime Minister shall, by way of regulation, determine multipliers of the basic salary referred to in paragraph (1) as a basis for determining the amount of the basic salary appointed to posts of experts, assistant experts and candidates for experts, and the amounts of seniority and function allowances, with regard to the scope of responsibilities conferred and the position held.

## **Article 272**

1. The expert's working day may not be longer than 8 hours and 40 hours per week on the average.

2. The work timetable in a week and the duration of individual working weekdays shall be determined taking into account the terms and conditions of work provided for the whole personnel of the Patent Office. Non-working days at the Office shall be added to the rest leave time.

3. A person serving as an expert for at least 10 years shall be entitled to an extra rest leave of six working days, and after 20 years of service on that post – of twelve working days.

4. On the conditions complying with the provisions of the Act on civil service, a person serving as an expert for a period not less than five years may be granted by the President of the Patent Office payable leave for recuperation.

5. For the period of disability to work in consequence of a disease suffered, an expert shall be entitled to receive the salary and a sick allowance for a period of one year at the amount and on the conditions laid down in separate provisions.

6. Paragraphs (3) to (5) shall not apply to assistant experts.

## **Article 272<sup>1</sup>**

1. The provisions of Articles 62 and 69(3) shall apply accordingly to experts and assistant experts, and to assistant experts also the provisions of Articles 83, 84 and 87 of the act of 18 December 1998 on civil servants (Journal of Laws of 1999 No 49 text 483 as subsequently amended).

2. The provisions of the act of 26 June 1974 – Labour Code (Journal of Laws of 1998, No 21 text 94 as subsequently amended) shall apply to the cases arising from the employment relationship of experts and assistant experts and not regulated in this Law and in the provisions mentioned in paragraph (1).

**Part III**  
**Disciplinary Responsibility.**  
**Suspension and Termination**  
**of Employment Contract with Expert**

**Article 273**

1. The expert shall bear disciplinary responsibility for defiance of service duties.
  
2. For the purpose of conducting proceedings and deciding in the cases referred to in paragraph (1), the President of the Patent Office shall appoint, from among the experts, a disciplinary prosecutor and members of the Experts' Disciplinary Commission and the Experts' High Disciplinary Commission in a number enabling to form a bench.
  
3. When necessary, where the disciplinary prosecutor referred to in paragraph (2) is not able to act in the case, the President of the Patent Office may casually appoint a substitute of the disciplinary prosecutor.
  
4. The following shall be disciplinary punishments:
  - (i) warning,
  - (ii) reprimand,
  - (iii) interdiction to occupy executive posts at the Patent Office,
  - (iv) interdiction to perform expert's duties.
  
5. In matters not regulated by this Law, the provisions on disciplinary responsibility of civil servants shall apply accordingly to disciplinary responsibility of experts.

## **Article 274**

1. The President of the Patent Office shall recall an experts from his/her post in the event of his/her physical or mental disability to work, ascertained in a physician's report issued for the purpose of making arrangements for pensioning or in a physician's report ascertaining the loss of capability to work on an assigned post, established by a physician authorised to do medical examinations of the Patent Office's staff.

2. The President of the Patent Office may recall an expert from his/her post:

- (i) on submitting by him/her a letter of resignation from the expert's post;
- (ii) in case of a need for reducing the corps of experts in consequence of changes in the range of tasks of the Patent Office or the continuing reduction in a number of cases handled,
- (iii) on failure by the expert, in the event referred to in Article 270(6), to submit a report established by an authorised physician on his/her continuing physical and mental capabilities to work,
- (iv) subject to paragraph (9), second sentence, on attaining by the expert of the retiring age, if with the period of his/her employment the expert becomes qualified for retirement pension on the attainment of that age,
- (v) upon expiration of the periods provided for in Article 53 of the Labour Code, in case of the expert's absence on account of sickness or isolation because of a contagious disease suffered, persisting for a period longer than the period of drawing the sick allowance, as well as in case of the excused absence in the work for other reasons.

3. An employment contract with an expert arrested and awaiting trial shall stay by virtue of law.

4. The President of the Patent Office may suspend an expert in service activities, where a disciplinary or penal proceeding has been instituted against him/her.

5. In the case of the suspension referred to in paragraphs (3) and (4), the expert shall be entitled to receive the salary and enjoy the respective rights and benefits on the conditions laid down in the Act on civil service.

6. An employment contract with an expert shall terminate in the cases determined in the Labour Code and in separate provisions, as well as:

- (i) on the loss of the Polish nationality,
- (ii) in case of a final decision inflicting the disciplinary punishment of interdiction to perform expert's duties,
- (iii) in case of a final court decision on deprivation of the expert of public rights or of interdiction to occupy an expert's post,
- (iv) on refusal to take an oath,
- (v) in case of valid conviction for an intentional offence.

7. Unless otherwise decided in the recall, the recall of the expert from his/her post shall effect upon his/her being served the notice of recall; the employee recalled from the post may be assigned performance of other works corresponding to his/her qualifications for the period up to the termination of the employment contract.

8. Termination of an employment contract with an expert shall have the same effects as those of the recall from the expert's post, the effects being binding as from the termination of the employment contract.

9. The recall of an expert from his/her post in the cases referred to in paragraph (1) and paragraph (2)(ii)-(iv), as well as in the case of the submission by the expert of the letter of resignation shall, subject to paragraph (11), be equal to the termination of the employment contract or its dissolution by mutual agreement. In the case referred to in paragraph (2)(iv), an expert may be recalled from his/her post before he/she attains the age of 65 only with his/her consent.

10. Subject to paragraph (11), the recall of an expert from his/her post in the cases referred to in paragraph (2)(v) shall amount to the dissolution of an employment contract without notice.

11. The recall of an expert from his/her post may not prejudice the provisions governing special protection of employees in cases involving termination or dissolution of an employment contract.

12. Restrictions on the dissolution of an employment contract with an expert shall not be applicable in respect of the additional powers referred to in Article 264(3). Withdrawal of an additional power entrusted to the expert for an unlimited period of time or before the assigned work is performed, shall amount to a notice to terminate working or payment conditions.

## **Chapter 4**

### **Chamber of Appeals**

*(repealed)*

## **Part IV**

### **Boards Hearing in Litigious Cases**

#### **Article 279**

1. Adjudicative boards in litigious cases, hereinafter referred to as “boards”, shall act at the Patent Office.

2. The boards shall decide in cases, falling within the scope of their competence, in panels composed of: the chairman and two members of a board. For hearing complicated cases, a board composed of five members may be appointed.



## Article 280

1. As chairman may be appointed an employee of the Patent Office:

(i) being of the Polish nationality and enjoying full capacity to enter into legal transactions and civic rights;

(ii) being of an unimpeachable character;

(iii) who has not been convicted for an intentional offence;

(iv) holding a university degree taken at the law faculty in the Republic of Poland and the title “master of laws” or holding a university degree taken abroad and recognized in the Republic of Poland;

(v) who completed a legal training for judges, legal advisers, advocates or public prosecutors, or holds a title of professor or of *doctor habilitatus* of law, or who was holding in public agencies, for a period of ten years, a post involved in the application or creation of administrative law.

2. The provisions on experts shall apply to chairmen of boards, the latter being released from an obligation to complete the practical training, referred to in Article 266(1).

3. Members of the board shall be, besides chairman, one expert empowered by the President of the Patent Office to adjudicate in litigious cases and one representative of the organisations referred to in Article 9, hereinafter referred to as “the representative”, appointed from a list of representatives established by the organisations concerned in consultation with the President of the Patent Office.

4. Where a board of five members has been appointed, it shall be composed, besides chairman, of two experts and two representatives.

5. A practising patent attorney may not be appointed the representative

## Article 281

1. Administrative support for the boards shall be provided by a separate organisational unit of the Patent Office.

2. Head of the organisational unit referred to in paragraph (1), appointed by the President of the Patent Office, shall:

(i) order completion of the documentary files requisite to fix a closed session or a trial, or of other evidence, as deemed necessary;

(ii) appoint an adjudicative panel;

(iii) order serving of copies of the request with the enclosures upon the opposite party in order to allow it to respond to the request;

(iv) fix a date of a closed session or a trial at which the case is to be heard;

(v) order notification about the trial of the parties and other persons, whose participation in the trial is deemed necessary;

## **Article 282**

1 Representatives appointed to decide in litigious cases and working under contracts of employment shall be released from their duties for a period of involvement in ruling in boards, while preserving the right to remuneration.

2. Representatives who are involved in the works of boards and are unemployed, shall be eligible to compensation payable for the involvement in the works of boards.

3. A minister responsible for public finance shall, upon consultation with a minister responsible for labour affairs, determine, by way of regulation, the manner of fixing the amount of compensation, referred to in paragraph (2), while taking into account, in particular, a nature of works done in the course of preparing and hearing cases.

4. Representatives having their domicile outside the location of the Patent Office, shall be entitled to daily subsistence allowances and to reimbursement of expenses for

travel and accommodation, on the conditions laid down in the provisions governing amounts and fixing allowances and other dues for business travels in the country, to which an employee of a state or autonomous agency supported from the state budget is entitled.

## **Title IX**

### **Enforcement of Claims in Civil Law Procedure**

#### **Part I**

##### **Common Provisions**

###### **Article 283**

Subject to Article 257, cases involving civil law claims in the field of industrial property protection, not falling within competence of other authorities shall be decided in civil law procedure in accordance with the general principles of law.

###### **Article 284**

The following cases, in particular, shall be decided in civil law procedure in accordance with the general principles of law:

- (i) for ascertainment of the authorship of an inventive project,
- (ii) for ascertainment of the right to a patent, a right of protection or a right in registration,
- (iii) for remuneration for the exploitation of an inventive project,
- (iv) for remuneration for the exploitation of an invention, a utility model or a topography for state purposes,
- (v) for compensation for the transfer to the State Treasury of a right to a patent for a secret invention or to a right of protection for a secret utility model, a right of protection or a right in registration,

(vi)[\[1\]](#) for infringement of a patent, a right of protection or a right in registration,

**(vi)[\[2\]](#) for infringement of a patent, a supplementary protection right, a right of protection or a right in registration,**

(vii) for ascertainment of the right to exploit an invention, a utility model or an industrial design in the cases referred to in Articles 71 and 75,

(viii) for ascertainment of the right to use, in a local-scale activity, a mark registered on behalf of a third party as a trademark,

(ix) for ascertainment of the right to use a geographical indication,

(x) for ascertainment of the loss of the right to use a geographical indication,

(xi) for the transfer of a patent, a right of protection for a utility model or a right in registration of an industrial design or a topography obtained by a person not entitled thereto,

(xii) for the transfer of a right of protection for a trademark in the case referred to in Article 161.

## **Article 285**

The holder of a patent, a supplementary protection right, a right of protection or a right in registration, or a person entitled under this Law, may demand stopping the acts threatening infringement of the right.

## **Article 286**

When ruling on the infringement of a right, the court may, at the holder's request, decide as to the disposal of unlawfully manufactured or marked products and of the means used in their manufacturing or marking.

## **Part II**

### **Claims Concerning Inventions,**

### **Utility Models, Industrial Designs**

## **and Topographies of Integrated Circuits**

### **Article 287**

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

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

### **Article 288**

1. Claims for infringement of a patent shall be enforceable after the grant of the patent.

2. Where the infringing person has acted in good faith, claims for the infringement of a patent shall be enforceable in respect of the period beginning on the day following the date of publication by the Patent Office of the patent application, and in case of the infringing person being earlier notified by the holder on the filing of the patent application, from the date of notice.

### **Article 289**

1. The period of prescription for claims for infringement of the patent shall be three years. The period concerned shall run, separately in respect of each individual infringement, from the date where the right holder has learned about the infringement of his patent and about the infringing person. However, in any case, the claim shall become barred by prescription five years after the date, on which the infringement has occurred.

2. The period of prescription shall be suspended for the time between the filing of the patent application with the Patent Office and the grant of the patent.

### **Article 290**

The entitled person referred to in Article 74, may demand that the person who, not being entitled to do so, applied for a patent or was granted the patent, surrender the unlawfully obtained profits and redress the damage, in accordance with the general principles of law. In addition to that, he may also request that person to publish an appropriate statement in the press and, if he acted intentionally, to pay an adequate amount of money to one of the organisations referred to in Article 9, for the purpose of encouraging inventive activity.

### **Article 291**

Unless otherwise agreed between the parties, in the event of the invalidation of the patent, an acquirer, a licensee or any other person on behalf of which the holder of the patent disposed of his right against payment, shall be entitled to reimbursement of such payment and to redress of damage, in accordance with the general rules of law. The disposer may, however, deduct any profits obtained by the acquirer as a result of the exploitation of the invention before the invalidation of the patent; where the profits exceed the payment and the damages sought, the disposer shall be exempted from liability.

### **Article 291<sup>1</sup>. [3]**

The provisions of Articles 287-291 shall apply accordingly to supplementary protection rights.

### **Article 292**

1. The provisions of Articles 287 to 291 shall apply accordingly to utility models and, subject to paragraph (2), to industrial designs.

2. If the infringer has acted in good faith, claims for infringement of a right in industrial design registration shall be enforceable in respect of a period beginning on the

day following the date of publication of the mention of the grant of the right in the “*Wiadomości Urzędu Patentowego*” and in case of the infringer being earlier notified by the right holder of the application filed, from the date of notice.

### **Article 293**

1. Subject to paragraphs (2) and (3), the provisions of Articles 287 to 291 shall apply accordingly to topographies of integrated circuits.

2. If the infringer has acted in good faith, claims for infringement of a right in registration shall be enforceable in respect of a period beginning on the day following the date of publication of the mention of the grant of the right in the “*Wiadomości Urzędu Patentowego*” and in case of the infringer being earlier notified by the right holder of the application filed, from the date of notice.

3. Paragraph (2) shall apply accordingly, where within a period of two years from putting a topography into exploitation for commercial purposes for the first time, a person entitled to the right in registration has notified a party who has exploited the topography without his consent, of his intention to apply the topography for registration with the Patent Office.

### **Article 294**

1. An inventor may enforce his claims for remuneration for the exploitation of his invention before a district court. He shall not be obliged to pay court costs.

2. In the case referred to in paragraph (1), the provisions of the Code of Civil Procedure governing legal actions involving claims arising out of employment shall apply accordingly.

### **Article 295**

The provisions of Article 294 shall apply accordingly to remuneration for utility models, industrial designs and topographies of integrated circuits.

**Part III**  
**Claims Concerning Trademarks**  
**and Geographical Indications**

**Article 296**

1. Any person whose right of protection for a trademark has been infringed or any person enjoying the same status, may demand the cessation of the infringement, the redress of its consequences, the surrender of the unlawfully obtained profits and the compensation of damages in accordance with the general principles of law. Article 287(2) shall apply accordingly.

2. Infringement of the right of protection for a trademark consists of unlawful use in the course of trade of:

- (i) a trademark identical to a trademark registered in respect of identical goods,
- (ii) a trademark identical or similar to a trademark registered in respect of identical or similar goods, if a likelihood of misleading the public, including in particular a risk of associating the trademark with a registered trademark, exists;
- (iii) a trademark identical or similar to a renown trademark registered for any kind of goods, if such use without due cause would bring unfair advantage to the user or be detrimental to the distinctive character or the repute of the earlier trademark.

3. The claims referred to in paragraph (1) shall also be enforceable against a person who only puts on the market the goods already bearing that trademark, provided that the goods do not originate from the right holder or from a party authorised by him to use the trademark.

4. When invoking the right of protection conferred by his trademark, the licensor may enforce the claims referred to in paragraph (1) against a licensee who breaches any provision in his licensing contract with regard to its duration and territory covered by the contract, the form covered by the contract in which the trademark may be used, as well as



the scope of the goods for which the trademark may be used or the quality of the goods. This shall apply accordingly to the sub-license.

5. A holder of a right of protection for a trademark may enforce the claims referred to in paragraph (1) against a licensee or a sub-licensee in case where the provisions of the sub-license contract, referred to in paragraph (4) have been breached, as well as in the case, where the contract has been concluded in breach of Article 163(2).

#### **Article 297**

1. In case of products bearing a counterfeit trademark, the court, when deciding in accordance with Article 286 on further disposal of the products, may only in exceptional cases recognise removal of the trademark therefrom sufficient enough for putting the product into circulation.

2. *(repealed)*

#### **Article 298**

Where the infringer has acted in good faith, claims for infringement of a right of protection for a trademark, shall be enforceable in respect of the period beginning on the day following the date of making the information on the filing of the application public by the Patent Office in accordance with Article 143, and in case of the infringer being earlier notified on the filing of the application, from the date of notice. The provisions of Article 288(1) and 289 shall apply accordingly.

**Article 299** – *(deleted)*

**Article 300** – *(deleted)*

#### **Article 301**

Subject to Article 165(1)(iii), a holder of a well-known trademark on the territory of the Republic of Poland may demand the cessation of the use of the identical or similar trademark in respect of identical or similar goods, if such use is likely to mislead the public as to the origin of the product.

## **Article 302**

1. Subject to Article 186, the provisions of Articles 296 to 298 shall apply accordingly to geographical indications.

2. The claims referred to in Article 296 may be enforced by a holder of a right in registration for a geographical indication, as well as by any party entered in the Register as authorised to use it.

## **Title X**

### **Penal Provisions**

## **Article 303**

1. Anyone who usurps another's authorship or misleads another party as to the authorship of another's person inventive project, or otherwise infringes rights of the creator of an inventive project, shall be liable to a fine, limitation of freedom or imprisonment for a period not exceeding one year.

2. A person committing the act referred to in paragraph (1) for material profit or personal gain shall be liable to a fine, limitation of freedom or imprisonment for a period up to two years.

## **Article 304**

1. Any person who, not being entitled to be granted a patent, a right of protection or a right in registration, files another's invention, utility model, industrial design or topography of an integrated circuit in order to be granted a patent, a right of protection or

a right in registration, shall be liable to a fine, limitation of freedom or imprisonment for a period of up to two years.

2. The same penalties shall incur anyone disclosing information on another's invention, utility model, industrial design or topography of integrated circuit or otherwise preventing another party from being granted a patent, a right of protection or a right in registration.

3. A person committing the act referred to in paragraph (2) unintentionally shall be liable to a fine.

### **Article 305**

1. Anyone marking goods with a counterfeit trademark for the purpose of placing them on the market or placing on the market goods bearing such trademark, shall be liable to a fine, limitation of freedom or imprisonment for a period of up to two years.

2. In case of an act of minor gravity, a person committing the offence referred to in paragraph (1) shall be liable to a fine.

3. A person who has made the offence referred to in paragraph (1) his continuing source of proceeds or commits that offence in respect of the goods of handsome value shall be liable to imprisonment for a period from 6 months to five years.

### **Article 306**

1. In case of conviction for the offence specified in Article 305(3), the court shall order forfeiture to the fiscus of the goods proceeding from the offence as well as the materials, tools and technical means, which have served or have been intended to serve for the purpose of committing the offence; if such materials, tools or technical means do not belong to the perpetrator, the court may order the forfeiture thereof to the fiscus.

2. In case of conviction for the offence specified in Article 305(1), the court may order forfeiture to the fiscus of the goods proceeding from the offence as well as the materials, tools and technical means, which have served or have been intended to serve for the purpose of committing the offence, even if they do not belong to the perpetrator.

3. In case of ordering the forfeiture referred to in paragraph (1) or (2), Article 195 of the Executive Penal Code shall apply accordingly, whatever is the value of the goods, the forfeiture of which has been ordered.

### **Article 307**

1. Anyone marking goods not protected by a patent, a supplementary protection right, a right of protection for a utility model or a right in registration for an industrial design, for a topography of an integrated circuit, or for a geographical indication, with statements or signs calculated to give the impression that the goods enjoy such protection, shall be liable to a fine or detention.

2. Anyone putting on the market, or preparing or stocking for that purpose the goods referred to in paragraph (1), or providing by announcements, communications or otherwise, information calculated to give the impression that the goods enjoy legal protection, while being aware of their being falsely marked, shall be liable to the same penalties.

### **Article 308**

Anyone putting on the market goods bearing a trademark accompanied by a discriminant which is intended to make the false impression that the goods enjoy such protection, shall be liable to a fine.

### **Article 309**

In organisational entities, the liability referred to in Articles: 303, 304, 305, 307 and 308 shall incur a person running or managing an entity, unless the allocation of responsibilities implies the liability of another person.

## **Article 310**

1. Prosecution of persons committing the offences referred to in Articles: 303, 304 and 305(1) and (2) shall be initiated at the injured person's request.

2. Cases involving the acts referred to in Articles: 307 and 308 shall be decided under the provisions governing the procedure applied in cases concerning petty offences.

## **Title XI**

### **Changes in the Effective Provisions**

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

### **Part I**

#### **Changes in the Effective Provisions**

## **Article 311**

In Article 35§2 of the Commercial Code, the full stop at the end of the sentence shall be deleted and the following words added: "and the Act – Industrial Property Law".

## **Article 312**

The following changes are introduced to the Code of Civil Procedure:

- 1) in Article 87:
  - (a) in §1 after the words "legal adviser" are added coma and the words: "and in industrial property matters also a patent attorney".
  - (b) §6 is added which reads as follows:

“§6. In matters involving the protection of industrial property, a creator of an inventive project may also be represented by a representative of an organisation, whose statutory tasks cover encouraging industrial property and assisting creators of inventive projects.”

- 2) In Article 89§1, second sentence, after the words “legal adviser”, are added coma and the following words: “and a patent attorney”;
- 3) In Article 99 after the words “legal adviser” the words “or a patent attorney” are added;
- 4) In Article 393<sup>2</sup>, §3 is added which reads as follows:

“§3. In cases involving industrial property matters a patent attorney may also be the representative referred to in §1”.

### **Article 313**

In Act of 20 September 1984 on the Supreme Court (O.J. of 1994 No 13 item 48, of 1995 No 34 item 163; of 1996 No 77 item 367; of 1997 No 75 item 471, No 98 item 604, No 106 item 679, No 124 item 782 and of 1999 No 75 item 853, and No 110 item 1255) in Article 16(2) the words “law on inventive activity” shall be replaced by the words “Industrial Property Law”.

### **Article 314**

In Act of 11 May 1995 on the Supreme Administration Court (O.J. No 74 item 368, No 104 item 515; of 1997 No 75 item 471, No 106 item 679, No 114 item 739, No 144 item 971; of 1998 No 162 item 1126; of 1999 No 75 item 853 and of 2000 No 2 item 5), the following changes shall be introduced:

- 1) in Article 19, subparagraph (vi) shall be deleted;
- 2) Article 57(2) shall read as follows:

“The Minister of Justice, the General Public Prosecutor, the First President of the Supreme Court, the President of the Supreme Administration Court, the Ombudsman, in matters falling within the field of labour law and social insurance – a minister responsible for labour and social policy, and in matters falling within the field of industrial property protection – the President of the Patent Office of the Republic of Poland, may lodge an extraordinary appeal to the Supreme Court against any decision of the Court, which grossly violates law or interest of the Republic of Poland.”

## **Part II**

### **Transitional and Final Provisions**

#### **Article 315**

1. Rights conferred in respect of inventions, utility models, ornamental designs, topographies of integrated circuits, trademarks and rationalisation projects, existing at the time of entry into force of this Law, shall remain effective. To these rights the previous provisions are applicable, unless the provisions of this Part stipulate otherwise.

2. Legal relationships established prior to the entry into force of this Law shall continue to be governed by the previous provisions.

3. Statutory requirements for the grant of a patent, a right of protection or a right in registration shall be assessed under the provisions effective at a date of filing of an application concerning an invention, a utility model, a trademark or a topography of an integrated circuit with the Patent Office. However, the provision of Article 37(2) shall apply to patent and utility model applications pending at the date of entry into force of this Law.

#### **Article 316**

1. Applications concerning ornamental designs filed before the date of entry into force of this Law and pending at that date, shall be considered as industrial design applications.

2. Patent applications concerning secret inventions or applications for the grant of a right of protection for a secret utility model, filed before the date of entry into force of this Law and pending at that date, shall be considered as applications filed for the purpose of claiming priority.

3. Applications for the grant of a right of protection of addition for a utility model filed before the date of entry into force of this Law and pending at that date, shall be considered as applications filed for the purpose of obtaining a right of protection.

4. As from the date of entry into force of this Law, applications concerning inventions, utility models, industrial designs, trademarks and topographies of integrated circuits shall be processed under the provisions of this Law.

5. The previous register of collective trademarks shall be considered as a separate complete book of the Trademark Register.

### **Article 317**

Subject to Articles 318 and 319, litigation proceedings before the Patent Office and proceedings before the Board of Appeals with the Patent Office, initiated before the date of entry into force of this Law and pending at that date, shall, as from the date of entry into force of this Law, be conducted under its provisions.

### **Article 318**

1. Litigation proceedings in the cases referred to in Article 255, conducted by the Patent Office under the previous provisions shall be continued before the Litigation Division.

2. Proceedings before the Board of Appeals in the cases referred to in Article 255, conducted under the previous provisions, shall be taken over by the Supreme Administration Court.

3. Appeals and complaints examined under the previous provisions before the Board of Appeals in the course of administrative procedure shall be taken over by the Patent Office and examined before the Chamber of Appeals in the procedure applied for re-consideration of cases.



4. Any proceedings in cases decided by the Patent Office and the Board Appeals in litigation procedure under the previous provisions and not falling, under this Law, within the competence of the Patent Office, shall be discontinued. Paid fees for requests for taking a decision and in case of cases heard by the Board of Appeals also appeal fees shall be liable to reimbursement.

### **Article 319**

Any cases in which a decision on the lapse of a right in trademark registration for the reason of non-use thereof is sought, shall be remitted to the Litigation Division, and appeals against such decisions, as complaints against decisions of the Patent Office shall be conveyed to the Supreme Administration Court.

### **Article 320**

To appeals and complaints conveyed to the Supreme Administration Court pursuant to Article 318(2) and Article 319, the provision of Article 318(4) second sentence shall apply accordingly.

### **Article 321**

Judgements of the Supreme Court passed in consequence of extraordinary appeals shall be transmitted for enforcement to competent authorities pursuant to the provisions of law.

### **Article 322\***

### **Article 323**

1. Staff members of the Patent Office who at the date of entry into force of this Law remain, under the previous provisions, authorised by the President of the Patent Office to decide in the matters referred to Article 261(2)(ii) and (iii), as well as on entries in registers, shall be authorised to decide for a period of three years from the date of entry into force of this Law and to the extent as provided for in this Law. However, if necessary, the President of the Patent Office may alter the scope of the authorisation granted.

2. Any employment relationships established with the staff members referred to in paragraph (1) by way of nomination, shall, upon the entry into force of this Law, convert into an employment relationship based on a contract of employment unlimited in time.

3. Grant of the authorisation for a staff member referred to in paragraph (1) to decide after the expiry of the three-years period from the date of entry into force of this Law, shall be conditional upon the pass of an examination. The provisions of Article 267(3) and (4) shall apply accordingly.

4. A staff member, who successfully passed the examination required under paragraph (3), may be advanced to an expert's post, while being released of the obligation to serve his apprenticeship as an assistant expert.

#### **Article 324**

Unless this Law stipulates otherwise, the provisions on establishing salaries in the agencies financed from the state budget, applicable in respect of members of civil servants corps, shall apply accordingly to determination of salaries and limits for recruitment of experts and assistant experts at the Patent Office.

#### **Article 325**

1. In case of entities lacking legal personality, a patent, a right of protection or a right in registration may only be granted on behalf of a legal person, of which the entity is member, or on behalf of a natural person or persons running that entity on his/their own behalf.

2. Rights belonging to the State Treasury shall be exercised in its name by a government agency or a State organisational unit competent to manage a respective State Treasury's property being the subject of a given right.

#### **Article 326**

The following shall be repealed:

- 1) Law of 19 October 1972 on Inventive Activity (O.J. of 1993 No 26 item 117; of 1997 No 88 item 554 and No 121 item 770),
- 2) Law of 31 January 1985 on Trademarks (O.J. No 5 item 17; of 1989 No 35 item 192; of 1993 No 10 item 46; of 1994 No 74 item 331 and of 1997 No 88 item 554),
- 3) Law of 30 October 1992 on the Protection of Topographies of Integrated Circuits (O.J. No 100 item 498; of 1997 No 88 item 554 and No 121 item 770),
- 4) Law of 31 May 1962 on the Patent Office of the Republic of Poland (O.J. of 1993 No 26 item 118),
- 5) the provisions of Articles 5-7 of the Law of 30 October 1992 amending the Law on Inventive Activity and the Law on the Patent Office of the Republic of Poland (O.J. of 1993 No 4 item 14).

## **Article 327**

This Law shall enter into force three months after its promulgation<sup>[4]</sup>.

## **Transitional provisions**

### **Article 2**

Proceedings before the Patent Office initiated at the Chamber of Appeals and pending on the date of entry into force of this Law, shall continue under the provisions of the act mentioned in Article 1, at the reading as provided in this Law.

### **Article 3**

Litigation proceedings before the Patent Office initiated and pending on the date of entry into force of this Law, shall continue under the provisions of the act mentioned in Article 1, at the reading as provided in this Law.

## Article 4

Until such time as the implementing regulation referred to in Articles 271(4) and 282(3) of the act mentioned in Article 1, at the reading as provided in this Law, the former provisions shall remain effective.

## Article 5

The provisions of the act mentioned in Article 1 at the reading as provided in this Law shall apply to experts, assistant experts and trainees employed before the entry into force of this Law.

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\* Published: Journal of Laws No 119/2003, text 1117; \*\* as amended by act of 23 January 2004 (Journal of Laws of 2 March 2004 NO 33 text 286)

[1] This text is binding until the entry into force of the amendment referred to in footnote 69

[2] As amended by Article 1 para 26 of the act referred to in footnote 3; it will become effective on the date of Poland's accession to the European Union

[3] Added by Article 1 para 28 of the act referred to in footnote 3; it will become effective on the date of Poland's accession to the European Union

\* Deleted as declared in the decision of the Constitutional Court taken on 21 March 2001 to be against the Constitution of the Republic of Poland, case K.24/2000 (Official Gazette No 10, item 160), pursuant to Article 122(4) of the Constitution

[4] The Act was promulgated on 21 May 2001