

Law No. II of 1969 on the Protection of Inventions by Patents (Under "Sections"), Joint Decree No. 4/1969 (XII. 28.) OMFB-IM of the President of the National Committee of Technical Development and of the Minister of Justice on the Implementation of Law No. II of 1969 (under "Rules") as amended and as in force on July 1, 1994* and Decree No. 9/1969 (XII. 28.) IM on Court Proceedings in Patent Matters (under "DCP Rules")

* The provisions set by italic entered into force on July 1, 1994.

Part I. Inventions and Patents ➔

CHAPTER I. SUBJECT OF PATENT PROTECTION ➔

Section 1

Patentable Inventions

Any solution which is new represents progress, is of a technical nature and is capable of practical application is a patentable invention.

Section 2

Novelty

A solution is new if it has not been made available to the public to such an extent that it can be carried out by a person skilled in the art.

Rule 1

(re Section 2 of the Law)

A solution is regarded as being made available to the public when it becomes accessible to anybody (for example by printed publication or by public use).

Section 3

Progress

A solution represents progress in comparison with the given state of the art if it satisfies needs which remained unsatisfied before or if it satisfies needs more advantageously than before.

Section 4

Technical Nature

A solution is of a technical nature if it brings about a change in a product or a manufacturing process.

Rule 2

(re Section 4 of the Law)

Processes of mensuration, analysis, plant growing and animal breeding are to be regarded as of technical nature.

Section 5

Practical Applicability

A solution is capable of practical application if it can be carried out repeatedly with the same result.

Section 6

Patent Protection

(1) The applicant shall be granted patent protection for his invention if:

(a) the invention satisfies the requirements prescribed in Sections 1 to 5 of the Law at the date of priority (Section 43) and if it is not excluded from patent protection under the terms of paragraph (3);

(b) the application complies with the formal requirements prescribed by this Law.

(2) Repealed under Section 24 (5) (a) of Decree Law No. 5 of 1983.

(3) The invention cannot be granted patent protection if

(a) Repealed under Section 6 of Law No. VII of 1994;

(b) the use thereof is contrary to law or socially accepted morals, unless merely the trade in such products is restricted by law;

(c) the subject matter thereof is identical with that of a patent having an earlier date of priority; where identity is only partial, a patent may be granted solely with appropriate limitations.

Rule 3

(re Section 6 (3) of the Law)

(1) Repealed under Section 6 of Law No. VII of 1994;

(2) A patent or utility model protection having an earlier date of priority (Section 6 (3) (c) of

the Law) shall mean a patent or utility model protection granted in Hungary: complete or partial identity shall be established by collating the claims.

CHAPTER II. RIGHTS AND OBLIGATIONS DERIVING FROM AN INVENTION AND FROM PATENT PROTECTION ➔

Section 7

Personal Rights of the Inventor

(1) The inventor is the person who created the invention. So long as a final court judgement does not rule to the contrary, the person named as such in the application filed at the National Office of Inventions with the earlier date of priority shall be considered to be the inventor.

(2) The inventor shall be entitled to be named as such in the documents concerning the patent.

(3) The inventor shall be entitled to institute proceedings under the Civil Code against anybody disputing his quality of inventor or infringing his other personal rights deriving from the invention.

(4) Prior to the publication effected in the course of the patent application procedure, the invention may only be disclosed with the consent of the inventor or his successor in title.

Section 8

Right to a Patent

(1) The right to a patent shall belong to the inventor or his successor in title.

(2) So long as a final court judgement or another decision by an authority does not rule to the contrary, the person having filed a patent application at the National Office of Inventions with the earliest date of priority shall be considered the person in whom the right is vested.

(3) If two or more persons have jointly made an invention, the right to a patent shall jointly belong to them or their successors in title. If two or more persons have created the invention independently of each other, the right to a patent shall belong to the inventor or his successor in title, who filed the application at the National Office of Inventions with the earliest date of priority.

Rule 4

(re Sections 7 and 8 of the Law)

(1) In the absence of any indication to the contrary, the shares of authorship or of patent claims shall be regarded as equal in cases where there are two or more inventors or persons entitled to claim.

(2) So long as a final court judgement does not rule to the contrary, the shares of authorship shall be accepted as they were submitted to the National Office of Inventions in the application with the earliest date of priority, or as defined under paragraph (1).

(3) Section 7 (4) of the Law shall not affect other provisions concerning the obligation to seek permission for the publication of an invention.

Section 9

Employee Invention

(1) An employee invention is an invention made by a person, who either on the basis of his employment or by virtue of other legal relations, is under obligation to develop solutions in the field of the invention.

(2) The right to a patent for an employee invention shall belong to the employer or the person entitled by other legal relations (hereinafter referred to as "the employer"). The inventor or his successor in title may dispose of the employee invention if the employer gives his consent.

(3) If the employer does not file a patent application within ninety days from the receipt of the disclosure of the invention, the inventor shall also be entitled to file the application, on simultaneously notifying the employer thereof in writing. The employee invention, may be disposed of by the inventor or his successor in title if, within sixty days from the receipt of the notification, the employer does not declare his intention to claim the patent.

(4) Disputes concerning the question whether an invention is an employee invention shall be settled by the court.

(5) The inventor of an employee invention shall be entitled to remuneration which shall be fixed by a separate regulation.

Rule 5

(re Section 9 (2) of the Law)

(1) Repealed under Section 14 (3) of Decree No. 4/1983.

(2) If the employer agrees to the fact that the inventor or his successor in title should dispose of the invention, the claim to the patent or the right to the same shall be transferred by the declaration of acceptance of the latter.

Section 10

Establishing Patent Protection

(1) Patent protection shall be established by the publication of the patent application; the effect of protection shall be retroactive to the date of application.

(2) Protection arising from the publication shall be provisional. It shall become definitive with the granting of the patent to the applicant.

Section 11

Effects of Patent Protection

(1) On the basis of patent protection, the owner of the patent (hereinafter referred to as the patentee) shall have, as provided for by legislation, the exclusive right to work the invention or to grant a license of exploitation to another person. The exclusive right of exploitation shall include the making, using, importing and putting on the market of the subject matter of the invention within the framework of economic activity.

(2) If the patent has been granted for a process, its effects shall extend to the products obtained directly by means of this process.

(3) In the absence of proof to the contrary, a product shall be deemed to have been obtained by the patented process, if the product is new or a substantial likelihood exists that the product was made by the patented process and the patentee has been unable, despite reasonable efforts, to determine the process actually used. A substantial likelihood that the product was made by the patented process exists, in particular, when the patented process is the only one known.

Rule 6

(re Section 11 (2) of the Law)

Repealed under Section 6 of Law No. VII of 1994.

Section 12

Duration of Patent Protection

(1) Definitive patent protection shall have a duration of twenty years beginning on the date of filing of the application.

(2) During the period of patent protection, annual patent fees, to be fixed by a special regulation, shall be payable. These fees shall be due each year on the date corresponding to the date of filing.

(3) Any annual fee may also be paid within a period of grace of six months beginning on the date when it became due.

Section 13

Scope of Patent Protection

The scope of patent protection shall be determined by the claims (Section 41 (2)). Claims may only be interpreted on the basis of the description and drawings.

Rule 6/a

(re Section 13 of the Law)

(1) Patent protection shall cover such a product or process in which all the characteristics of the claim are realized.

(2) The demand for remuneration deriving from patent protection shall not be affected if in the product or process one or more characteristics of the claim are replaced by equivalent

characteristics, or by corrected characteristics made available to the user by the patentee or the inventor.

Section 14

Limitations of Patent Protection

(1) A right of prior use shall belong to any person who

(a) before the date of priority;

(b) in the period between the expiration and restoration of patent protection;

(c) in the period between the establishment of the expiration of patent protection, the nullification of or the limitation on the patent and the alteration thereof by a decision taken under a protest on legal grounds, started, in the territory of the country, in good faith and within the framework of his economic activities, the regular manufacture or use of the subject matter of the invention or had made serious preparations with a view to doing so.

(2) Patent protection shall have no effect against a person entitled to a right of prior use to the extent of such manufacture, use or preparations. The right to prior use shall only be transferable with the undertaking or the production unit to which it belongs.

(3) Where reciprocity exists, the effects of patent protection shall not extend to means of communication and transport which are in transit in the territory of the country and to foreign goods which are not intended to be put on the market in the country.

Rule 7

(re Section 14 (1) of the Law)

Any prior user shall be considered as in good faith until it is proved that the prior use is based on the inventor's activity creating the invention protected by a patent.

Section 15

Transfer of Rights

(1) Rights deriving from an invention and from patent protection, with the exception of personal rights, may be transferred, assigned and restricted.

(2) Transfer by contract may be invoked against a third party who acquired his right in good faith and for a consideration only if the transfer is recorded in the Patent Register.

Section 16

Joint Patent Application and Joint Patent

(1) Where there are two or more patentees for the same patent, each joint patentee may dispose of his share only. If a share is alienated, the other joint patentees shall have a right of pre-emption.

(2) Each joint patentee may exploit the patent also by himself, but he must give appropriate remuneration to the other joint patentees, in proportion to their shares.

(3) Joint patentees may only jointly grant a license to a third party for the exploitation of the patent. A judicial decision may be substituted for consent under the general rules of civil law (Civil Code, Section 5 (3)).

(4) In case of doubt, the shares of joint patentees shall be equal. If one of the joint patentees renounces patent protection (Section 31), the rights of the other joint patentees shall cover his share in proportion to their shares.

(5) Each joint patentee may take steps, also individually, in order to maintain and protect the patent right. Costs concerning the patent are to be acquitted by the joint patentees, despite being notified, does not acquit the cost charged to him, the joint patentee bearing the cost may claim the transfer of the share of the joint patentee who did not fulfil his obligation.

(6) The provisions concerning patents in joint ownership shall apply to joint patent applications as well.

Rule 8

(re Section 16 (5) of the Law)

(1) Where one of the patentees acts independently to maintain and protect patent rights, his legal acts - waiver of rights excepted - are binding on any other joint patentee who has failed to observe a time limit or to perform a required act, provided that he has not subsequently remedied his omission.

(2) Where the actions of the joint patentees in the proceedings differ, the National Office of Inventions shall make a decision in this respect taking into account all other relevant material in the case.

(3) The same provisions shall apply mutatis mutandis to joint applicants.

CHAPTER III. CONTRACTS OF EXPLOITATION ➡

Section 17

Conclusion of Contracts of Exploitation

(1) On the basis of a contract of exploitation (contract granting a license under a patent) the patentee grants a license for the exploitation of the invention; in exchange, the user is under obligation to pay royalties.

(2) A contract of exploitation may be invoked against a third party who acquired his right in good faith and for a consideration only if it is recorded in the Patent Register.

Section 18

Rights and Obligations of the Parties

(1) The patentee shall guarantee, for the duration of the contract of exploitation, that third parties shall have no right in the patent which would prevent or limit its exploitation. This guarantee shall be subject to the same rules as those applying to a vendor for the transfer of his right of ownership, with the difference that the user, instead of withdrawing, may rescind the contract with immediate effect.

(2) The contract of exploitation shall cover all points of the patent claims and every mode of exploitation to any extent whatever, without limitation in time or space. However, a right of exploitation under a license contract shall be exclusive only if expressly stipulated.

(3) The patentee shall inform the user of any rights deriving from the patent, as well as of important circumstances. Nevertheless, he shall be obliged to transfer technical know-how for the working of the invention only if this has been expressly agreed.

(4) The license may be assigned by the user to a third party only with the express consent of the patentee.

(5) The patentee shall be obliged to ensure maintenance of the patent.

Section 19

Expiration of the Contract of Exploitation

(1) The contract of exploitation shall expire, with effect for the future, when the period of its duration comes to an end or if certain specified circumstances occur.

(2) Repealed under Section 24 (5) (a) of Decree Law No. 5 of 1983.

Section 20

Effect of the Provisions Relating to Contracts of Exploitation

(1) The parties, by mutual consent, may lay down terms that differ from the provisions relating to contracts of exploitation, where this is not prohibited by legislation.

(2) Matters relating to contracts of exploitation and not covered by this Law shall be governed by the provisions of the Civil Code.

CHAPTER IV. COMPULSORY LICENSES EXPLOITATION BY THE STATE ➔

Section 21

Compulsory License for Non-working of the Patent

If within four years from the date of filing of the patent application, or within three years from the grant of the patent, whichever period expires last, the patentee has not worked the invention in the territory of the country to satisfy the domestic demand or if he has not undertaken serious preparations or has not granted a license for such purpose, a compulsory license shall be granted, on request, to an enterprise having domicile in the country (Section 685(c) of the Civil Code is relevant for defining persons in this category), unless the patentee justifies the lack of working.

Rule 9

(re Section 21 of the Law)

Repealed under Section 6 of Law No. VII of 1994.

Section 22

Compulsory License in the Case of Dependent Patents

(1) If the patented invention cannot be worked without infringing another patent (hereinafter referred to as "the dominant patent"), a compulsory license shall be granted, on request and to the extent necessary for the working of the dominant patent, to the owner of the dependent patent, provided that the invention claimed in the dependent patent involves an important technical advance of considerable economic significance in relation to the invention claimed in the dominant patent.

(2) Where a compulsory license has been granted under paragraph (1) in respect of a dominant patent, the owner of such patent shall be entitled on reasonable terms to a license to work the invention claimed in the dependent patent according to the common provisions on compulsory licenses.

Section 23

Common Provisions on Compulsory Licenses

(1) The application for a compulsory license shall establish that the requirements for a compulsory license are complied with, further, that

(a) the patentee was unwilling to grant a voluntary license to work the patent under appropriate conditions and within a reasonable period of time, and

(b) exploitation of the invention to the required extent is ensured.

(2) The scope and duration of a compulsory license shall be established by the court, taking into account the purpose of the working authorized by the compulsory license; a compulsory license may be granted with or without limitation. Unless renounced or cancelled, a compulsory license shall have effect until expiration of the duration fixed by the court or of patent protection. Compulsory licenses shall be non-exclusive; they shall be recorded in the Patent Register.

(3) The patentee shall receive adequate compensation for the compulsory license, which shall be fixed, failing agreement between the parties, by the court. The remuneration shall take into adequate account the economic value of the compulsory license. In particular, it shall be commensurate with the remuneration the holder of the compulsory license would have paid on the basis of a contract to work concluded with the patentee, taking into account the licensing conditions applying in the technical field of the invention.

(4) The holder of a compulsory license shall have the same right as the patentee in regard to the maintenance of the patent and the exercise of the rights deriving from protection.

(5) If the enterprise holding a compulsory license ceases to exist or if any of its organizational units is separated, the compulsory license shall be transferred to the

successor in title. A compulsory license granted in respect of a dominant patent may only be assigned together with the dependent patent. However, a compulsory license may not be assigned or transferred to any other person. The holder of a compulsory license may not grant a license to work.

(6) The holder of a compulsory license may renounce his compulsory license at any time. If, within one year from the definite grant of the compulsory license, the holder thereof does not start exploitation, the patentee may claim modification or cancellation of the compulsory license.

(7) The patentee may request modification or cancellation of a compulsory license if the circumstances on which it was based cease to exist and are unlikely to recur. Modification or cancellation shall take a form that does not prejudice the legitimate interests of the holder of the compulsory license.

Section 24

Exploitation for the Needs of National Defense

Repealed under Section 6 of Law No. VII of 1994.

Rule 10

(re Section 24 of the Law)

Repealed under Section 6 of Law No. VII of 1994.

CHAPTER V. INFRINGEMENT OF INVENTIONS AND PATENTS ➔

Section 25

Infringement of an Invention

Where the subject of a patent application or of a patent has been taken unlawfully from the invention of another person, the injured party or his successor in title may claim partial or total assignment of the patent application or of the patent.

Section 26

Patent Infringement

(1) Any person who unlawfully exploits an invention under patent protection commits patent infringement.

(2) The patentee may, according to the circumstances of the case, have recourse to the following civil remedies:

(a) request that the fact of infringement be declared by the court;

(b) request an injunction in order to stop the infringement and enjoin the infringer to discontinue the infringement;

(c) demand satisfaction from the infringer by way of a declaration or by other appropriate means: if necessary, the declaration shall be made public by the infringer or at his expense;

(d) demand restitution of the enrichment obtained by infringement of the patent;

(e) request the court to order the seizure of the instruments used for the infringement and of the infringing products.

(3) The court may rule, according to the circumstances of the case, that the instruments and products seized be divested of their infringing character or be auctioned according to court procedure; in the latter case the court shall fix the sum to be collected.

(4) A compensation shall be due for damages caused by patent infringement under the provisions of the Civil Code.

Section 27

Rights of the Applicant and of the User in the Event of Patent Infringement

(1) An applicant whose invention benefits from provisional protection may also institute proceedings for patent infringement; the proceedings shall be deferred, however, until the decision to grant the patent has become final.

(2) In the event of patent infringement, the user may call upon the patentee to take appropriate action in order to put a stop to the infringement. If the patentee, within thirty days from the notification, fails to take action, the user recorded in the Patent Register may institute proceedings, in his own name, for patent infringement.

Section 28

Decision of Non-Infringement

(1) Any person who fears that proceedings for patent infringement will be instituted against him may, prior to the institution of such proceedings, request a decision ruling that the product manufactured or intended to be manufactured by him, or the process applied or intended to be applied, not infringe a particular patent specified by him.

(2) A definitive decision of non-infringement bars the institution, on the basis of the patent concerned, of infringement proceedings in respect of the same product or process.

CHAPTER VI. EXPIRATION OF PATENT PROTECTION ➡

Section 29

Expiration of Provisional Patent Protection

(1) Provisional patent protection (Section 10 (2)) shall expire with retroactive effect to the date of origin if:

(a) the application is definitively rejected;

(b) in the case of deferred examination, if such examination is not requested within the

period of four years prescribed by this Law (Section 47 (3)) or is not ordered ex officio;

(c) the annual fees have not been paid even during the period of grace (Section 12 (3));

(d) the applicant surrenders his rights.

(2) In the case of employee inventions the employer may terminate the provisional patent protection under subparagraphs (c) and (d) of paragraph (1) if the inventor does not lay a claim to the patent application.

Section 30

Expiration of Definitive Patent Protection

Definitive patent protection shall expire,

(a) when the period of protection comes to an end, on the day following the date of expiration;

(b) if the annual fees have not been paid, even, during the period of grace (Section 12 (3)), on the day following the date when the fee became due;

(c) if the patentee surrenders his patent, on the day following receipt of the surrender, or on an earlier date specified by the person surrendering the patent;

(d) if the patent is declared null and void, with retroactive effect to the date of filing of the application (Section 32 (1)).

Section 30/A

Restoration of Patent Protection

(1) If the patent protection ceased to exist due to default to pay the annual fee, the National Office of Inventions shall restore the protection if the default was caused by a justifiable reason.

(2) The applicant or the patentee may ask the National Office of Inventions to restore the patent protection within three months after the expiration of the period of grace (Section 12 (3)).

Section 31

Surrender of Patent Rights

(1) The applicant, appearing in the list of published patent applications, or the patentee listed in the Patent Register, may surrender his patent rights by written declaration addressed to the National Office of Inventions. If the surrender affects the rights of third parties based on legislation, on decision of an authority, on a license contract recorded in the Patent Register, or if proceedings are recorded in the Patent Register, it shall only take effect with the consent of the parties concerned.

(2) It shall also be possible to surrender certain claims of the patent.

Rule 11

(re Section 31 of the Law)

- (1) Retraction of the surrender of patent rights shall have no legal effect.
- (2) Repealed under Section 14 (3) of Decree No. 4/1983.

Section 32

Nullity of and Limitations on Patents

- (1) The patent shall be declared null and void with retroactive effect to its origin if:
 - (a) the subject of the patent does not satisfy the requirements laid down in Section 6 (1) (a);
 - (b) the description does not satisfy the legal requirements (Section 41).
- (2) Where conditions of nullity exist only partially, the patent shall be limited accordingly.
- (3) Nullity, as well as limitation, shall be recorded in the Patent Register and published in the Gazette of Patents and Trademarks.

Section 32/A

Reclaiming of Fees

If the definitive patent protection expires with retroactive effect, only the portion of the remuneration collected in good faith by the patentee or the inventor can be reclaimed which was not covered by the profitable results derived from the invention.

Part II. Procedure in Patent Matters ➡

CHAPTER VII. GENERAL REGULATIONS FOR PROCEDURE BEFORE THE NATIONAL OFFICE OF INVENTIONS ➡

Section 33

Powers of the National Office of Inventions

The National Office of Inventions shall be empowered to:

- (a) grant patents;
- (b) declare that patent protection has expired, or restore it;
- (c) pronounce a patent null and void;
- (d) pronounce non-infringement;

- (e) interpret the description in a patent;
- (f) deal with matters concerning the maintenance and registration of patents.

Section 34

Application of the General Provisions on Administrative Procedure

(1) The National Office of Inventions shall proceed in patent matters, with the exceptions prescribed in this Law, by applying Law No. IV of 1957 on the General Provisions on Administrative Procedure. In the cases specified in special legislation, the National Office of Inventions shall take decisions in sittings in chambers.

(2) The National Office of Inventions may retract or modify its decisions on patent matters taken on merits only on the basis of a request for review and until its transmittal to the court. Its decisions may not be invalidated or changed by a supervisory authority, they shall be without appeal.

(3) A decision in patent matters taken by the National Office of Inventions may be changed by the court, in conformity with the provisions of Section 57.

Rule 12

(re Section 34 of the Law)

(1) The National Office of Inventions shall deliberate in sittings in chambers:

- (a) Repealed under Section 14 (3) of Decree No. 4/1983;
- (b) in revocation proceedings;
- (c) in proceedings for a decision on non-infringement;
- (d) for the interpretation of a patent description.

(2) The chamber shall consist of a president and two members designated from the employees of the National Office of Inventions by its President. The decisions of the chamber shall be taken by majority vote.

(3) Decisions of the National Office of Inventions are final when they are delivered.

(4) Decisions of the kind listed in Section 57 (1) of the Law shall be considered decisions taken on merits; they shall be transmitted to the inventor of the employee invention as well.

(5) Documents issued abroad are conclusive evidence - in the absence of an international agreement or of reciprocity - only if they have been validated by the Hungarian diplomatic mission competent for the country of issue.

Rule 13

(re Section 34 of the Law)

(1) The applicant may withdraw his application before publication. The National Office of Inventions shall take note of the withdrawal by a decision. In case of an employee invention the employer may retract the patent application only if the inventor does not lay a claim thereto.

(2) The fees of witnesses and experts shall be decided in accordance with the provisions governing witnesses and experts in court proceedings.

(3) In the case of the decease of a party (or the dissolution of a legal entity) the proceedings shall be suspended until the person of the successor in title is registered and his claim justified.

(4) At the request of the adverse party, the National Office of Inventions shall appoint a trustee for the unknown heirs.

Section 35

Access to the Files

(1) Until the publication of the patent application, only the applicant, his representative, the expert or the body called upon to give an expert opinion shall have access to the files, be allowed to make copies or be allowed to participate in the procedure. The inventor shall have access to the files and may make remarks even if he is not the applicant.

(2) Proceedings before the National Office of Inventions shall be public only if there is an adverse party participating.

(3) The President of the National Office of Inventions may order on the request of the competent Minister and in the interest of national defense, that the patent application shall be dealt with as a State secret. In the case, publication of the application, grant of the patent, and printing of the description shall be waived; the other proceedings relative to the patent shall also be qualified as a State secret.

Section 36

Power of Attorney

(1) The National Office of Inventions may order the party, where warranted, to give power of attorney to a patent attorney or an attorney-at-law in order to represent him, jointly or alone.

(2) An alien shall be obliged to give power of attorney to an attorney-at-law, a patent attorney or other qualified person, having domicile in the country, in order to represent him in proceedings before the National Office of Inventions.

Rule 14

(re Section 36 of the Law)

A power of attorney shall be drawn up in a public instrument or in a private agreement constituting conclusive evidence. A power of attorney given to a patent attorney or an attorney-at-law shall be valid if signed by the principal.

Section 37

Registration of Patent Matters

(1) The National Office of Inventions shall keep a list of published patent applications as well as a Register concerning patents and the rights relative thereto; all proceedings and other circumstances concerning published patent applications and patents shall be recorded therein.

(2) Any right relative to patent protection may be invoked against a third party who acquired his right in good faith and for a consideration only if it is recorded in the list or Register.

(3) Information shall be recorded in the list of published patent applications or in the Patent Register only on the basis of definitive decisions of the National Office of Inventions or of a court.

(4) The Patent Register shall be accessible to anyone; copies of the information it contains shall be available on request.

(5) All decisions and all facts the publication of which is prescribed by legislation shall be published in the Official Gazette of the National Office of Inventions.

Rule 15

(re Section 37 (1) of the Law)

In the list of published patent applications the following shall be stated:

- (a) the serial number of the published patent application;
- (b) the reference number;
- (c) the title and class of the invention;
- (d) the name (or trade name) of the applicant, his occupation and address (or office);
- (e) whether or not the invention is a service invention;
- (f) the representative's name and address (or office address);
- (g) the inventor's name, occupation and address;
- (h) the filing date;
- (i) the priority of the application;
- (j) the date of publication;
- (k) in the case of a deferred examination, the date fixed for the subsequent examination and for the publication of the latter;

(l) Repealed under Section 14 (3) of Decree No. 4/1983.

(m) where a patent is issued, the patent number;

(n) the amount of the patent fee and the date of payment;

(o) the expiration of the provisional protection afforded by the patent application, cause and date thereof;

(p) on written request by the registered owner supported by public documents or private agreements constituting conclusive evidence, the succession to the title and contracts relating to the invention, as well as any fact or circumstance relevant to the provisional protection.

(2) Any person may have access to the list of published application and on payment may request a copy of the contents.

Rule 16

(re Section 37 (1) of the Law)

(1) The following shall be stated in the Patent Register:

(a) the registered number of the patent;

(b) its reference number;

(c) the title and class of the patent;

(d) the name (or trade name), occupation and address (or office) of the patentee;

(e) whether or not the invention is a service invention;

(f) the representative's name and address (or office address);

(g) the inventor's name, occupation and address;

(h) the filing date;

(i) the priority of the patent;

(j) the date of the decision granting a patent;

(k) the essential details of the decision limiting the protection of the patent (such as the right of prior use or compulsory license);

(l) the amount and the date of payment of the annual fee;

(m) the expiration of final patent protection, the cause and date thereof;

(n) on written request by the registered owner supported by public documents or private

agreements constituting conclusive evidence, the succession to the title and contracts relating to the patent, as well as any fact or circumstance relevant to the patent protection.

(2) Any person may have access to the Patent Register and on payment may request a copy of the contents.

Rule 17

(re Section 37 (3) of the Law)

(1) On the basis of the decisions listed in Section 57 (1) subparagraphs (a) to (c) of the Law, information may only be recorded in the list of published patent applications and in the Patent Register if the party has not submitted a request for review within the stipulated time, or if the court has made a definitive decision in the case.

(2) The recording of the rights and facts relating to patent protection, as well as all relevant information, shall be requested in writing from the National Office of Inventions. The public documents or private agreements constituting conclusive evidence shall be attached to such request.

(3) A request is inadmissible if it is based on an instrument which is invalid through a defect in form or which lacks the official authentication required by law, or if it is clear from the contents of the instrument that statements of a legal character contained in the instrument are invalid.

(4) Where the request or its attachments contain remediable insufficiencies, the applicant shall be invited to remedy the insufficiencies or to make a declaration.

Rule 18

(re Section 37 (5) of the Law)

The following shall be published in the Gazette of Patents and Trademarks:

(a) the serial number of the published patent application, the reference number, the title and class of the invention, the name (or trade name) of the applicant, his occupation, address (or office), the representative's name and address, the inventor's name, occupation and address, the date of application, the priority of the application, and the deferred or complete examination of the application;

(b) the registered number of the patent granted, the reference number, the title and class of the patent, the name (or trade name) of the patentee, his occupation and address (or office), the representative's name and address, the inventor's name, occupation and address, the date of the application, the priority of the patent and the date of the decision granting the patent;

(c) the order for subsequent examination with reference to the published application;

(d) the expiration of patent protection, the cause and date of expiration, the serial number of the published patent application, or the registered number of the patent and the title of the invention or patent;

(e) the essential data of the decision establishing limitation of patent protection;

(f) any assignment and any contract recorded in the published patent application or in the Patent Register.

Section 38

Restoration of Rights

In patent proceedings - unless prohibited by legislation - a request for the restoration of rights may be submitted within fifteen days from the unobserved time limit, or the last day of the unobserved period.

Rule 19

(re Section 38 of the Law)

(1) In patent matters there shall be a time limit of at least 30 days, which may be extended on request before expiration of the period. A time limit of more than three months and more than three extensions of a time limit may be given only in special cases.

(2) In patent matters the default of duly called witnesses shall not prevent the hearing from being held and judgment given. If it is necessary to hear the party in default in order to clarify the facts of the case, the hearing shall be postponed.

(3) Restoration of rights may not be considered:

(a) in the event of non-payment of annual fees due (Section 12 (3) of the Law);

(b) in the event of non-compliance with the time limit prescribed for the submission of a request initiating a subsequent examination (Section 47 (3) of the Law);

(c) in the event of non-compliance with the time limit fixed for submitting a request for the restoration of patent protection (Section 30/A (2) of the Law);

(d) in the event of non-compliance with the time limit prescribed for submitting the declaration of priority or the document justifying priority (Section 43 (4) of the Law);

(e) in the event of non-compliance with the time limit fixed for derivation (Section 40/A (2) and (3)).

(4) If the National Office of Inventions grants the request for restoration of rights, the acts of the party in default remedying the omissions shall be considered as if they had been performed within the original time limit; the hearing held on the date previously fixed shall be repeated as far as necessary. In accordance with the outcome of the new hearing, a decision shall be made as to whether the decision taken at the original hearing should stand or should be revoked in whole or in part.

Section 39

Use of Languages

In patent proceedings, documents in foreign languages may also be submitted: the National Office of Inventions may, however, require a translation into Hungarian language.

Rule 20

(re Section 39 of the Law)

The National Office of Inventions may, where necessary, request the authentication of the translation into Hungarian.

CHAPTER VIII. PATENT APPLICATION PROCEDURE ➡

Section 40

Patent Application

(1) The procedure for the grant of a patent shall begin with the filing of a patent application with the National Office of Inventions.

(2) The patent application shall consist of the description of the invention, and other relevant documents. Detailed formal requirements for patent applications shall be prescribed by special decree.

(3) Rights can only be based on an application which contains at least the name and address of the applicant as well as a description of the essential features of the invention (Section 41 (1)). The description can also be made by reference to a priority document.

Section 40/A

Derivation from Utility Model Application

(1) Where the applicant has already filed, at an earlier date, a utility model application, in his declaration of priority concerning a patent application for the same subject matter he may claim, in addition to retaining the filing date of the utility model application, the right of priority relevant for the utility model application.

(2) Priority and filing date of the utility model application shall only apply, on the basis of derivation, to the patent application if the application and declaration of priority are received by the National Office of Inventions in the course of the utility model application procedure within three months from the date when the decision on the grant of utility model protection becomes final.

(3) Derivation of a patent application shall be admissible only within twenty years from the filing date of the utility model application.

Rule 21

(re Section 40 (2) of the Law)

(1) A patent application relating to an invention based on the use of a species of microorganism shall be accompanied by a certificate concerning the deposit of the said species of microorganism, or the notoriety of the species and the accessibility thereto shall be certified. Where the species is deposited after the date of filing of the patent application, the date of deposit shall be regarded as the date of filing.

(2) The strain of microorganism shall be deposited with the University of Horticulture - MezÜgazdas gi ,s Ipari Mikroorganizmusok Nemzeti GyÜjtem,nye (National Collection of Agricultural and Industrial Microorganisms) -, which shall examine the strain; if it finds the strain suitable for preservation, it shall issue a certificate of deposit showing the exact date of delivery. The depositor shall give all information necessary for the examination.

(3) The University of Horticulture shall treat as secret all information concerning the deposited strain until the publication of the patent application.

(4) After publication of the patent application, the University of Horticulture shall place the strain at the disposal of any person wishing to examine it, on the normal payment charged in international transactions and shall notify the depositor accordingly.

(5) The Minister of Agriculture shall draw up the detailed rules for the deposit and shall determine the fees payable for the deposit and for the required examination.

(6) Deposit with a foreign organization may be taken into account in case of international treaty or failing this in case of reciprocity. In matters of reciprocity the President of the National Office of Inventions shall be competent to give a ruling.

Section 41

Description

(1) The description shall make it possible for a person skilled in the art to carry out the invention on the basis of the description and drawings.

(2) At the end of the description one or more claims shall define, in accordance with other parts of the description, the scope of the protection applied for.

Section 42

Unity of Invention

In any patent application, patent protection may only be sought for a single invention. More than one invention may only be included in a single application if the subjects thereof are directly linked to each other.

Section 43

Priority

(1) The priority date establishing priority is:

(a) generally, the day on which the application (priority by application) or the amendment extending the scope of protection beyond the solution disclosed in the application (priority by amendment) arrived at the National Office of Inventions;

(b) in the cases defined by special legislation, the filing date of the foreign application (convention priority);

(c) in the cases determined by an announcement of the President of the National Office of

Inventions published in the Official Gazette, the day of the exhibition of the invention (priority by exhibition).

(2) The order of priority of applications which arrived on the same day shall be determined by their serial number in the list of applications.

(3) Different claims may have different priorities.

(4) The priority defined in paragraph (1) (b) and (c) can only be claimed by a person who has submitted his declaration of priority simultaneously with the patent application. Nevertheless, the document justifying the priority shall be submitted, on pain of loss of the right of priority, within three months of the filing of the application.

(5) If the applicant, on request or on his own initiative, divides his patent application, all divisional applications shall have the original date of filing as their filing date and may also retain, where applicable, the right of priority.

Rule 22

(re Section 43 (1) (c) of the Law)

(1) Priority by exhibition may be claimed only where the relevant priority declaration is submitted at the same time as the patent application within six months from the first day of the exhibition.

(2) A certificate from the authority responsible for the exhibition shall be attached to the request for application certifying the existence of the exhibition and its date and containing a description of the exhibited invention and, where appropriate, a drawing of the exhibited invention on which the authority responsible certifies its identity with the exhibited invention. The certificate of exhibition and the certificate of identity may only be issued during the period of exhibition and only so long as the object of the invention or its description or presentation may be seen at the exhibition.

Section 43/A

Publication of Data

After the patent application has been filed, the National Office of Inventions shall publish certain definite particulars of the patent application in the Gazette of Patents and Trademarks.

Rule 22/A

(re Section 43/A of the Law)

After the patent application has been filed, the following data shall be published:

(a) name and address of the applicant or the eventual representative,

(b) reference number of the application,

(c) date of filing of the application, and date of priority if different therefrom, country and number of the earlier application,

(d) number of the international publication in case of an international application,

(e) title of the invention.

Section 44

Formal Examination of the Patent Application

(1) The National Office of Inventions shall, in all cases, undertake an examination of the patent application in order to ascertain whether it complies with the requirements prescribed in Section 40 (2) and (3).

(2) If the patent application is so incomplete that no right can be based on it (Section 40 (3)), the application shall be rejected without further procedure.

(3) If the patent application does not comply with the requirements prescribed in Section 40 (2), the applicant shall be so notified and invited to remedy the insufficiencies. If the notification produces no result, the patent application shall be rejected.

(4) If an employer who has filed an application in respect of an employee invention does not remedy the insufficiencies or does not make the declaration requested despite repeated notification, his attitude shall be regarded as consent to the fact that the inventor may dispose of the invention. In such a case, the inventor shall be invited to remedy the insufficiencies or to make a declaration within a new, appropriately fixed time limit, and if he enters the procedure, it shall be continued with his participation.

Section 45

Scope of the Examination of the Substance of the Patent Application

The National Office of Inventions shall examine the substance of the patent application in regard to the following points:

(a) whether the subject of the application is of a technical nature and capable of practical application;

(b) whether the subject of the application is excluded from patent protection under Section 6 (3) (b);

(c) whether the description and patent claims comply with legal requirements;

(d) whether the invention is unitary;

(e) whether the application is entitled to the claimed right of priority;

(f) whether the subject matter of the application is new and represents progress;

(g) whether there is no other patent application or patent relating to the same invention and having an earlier right of priority.

Section 46

Complete Examination

The National Office of Inventions shall undertake a complete examination including subparagraphs (a) to (g) of Section 45:

- (a) if the applicant so requests;
- (b) with regard to the field in respect of which the President of the National Office of Inventions, acting with the consent of the competent Minister, orders a complete examination in an announcement published in the Gazette of Patents and Trademarks;
- (c) if the National Office of Inventions otherwise orders a complete examination ex officio.

Section 47

Deferred Examination

- (1) In the absence of the conditions set forth in Section 46, the National Office of Inventions shall undertake an examination of the application prior to publication only as regards points (a) to (e) of Section 45.
- (2) The next stage of the deferred examination (subsequent examination) shall include examination of the requirements set forth in points (f) and (g) of Section 45.
- (3) Subsequent examination shall be ordered by the National Office of Inventions within the period of four years from the publication of the patent application at the request of any person, or it may also be ordered ex officio.

Rule 23

(re Sections 46 and 47 of the Law)

- (1) Where the applicant at the time of application does not request complete examination, a deferred examination shall be carried out. Withdrawal of a request for complete examination or for subsequent examination shall have no legal effect.
- (2) A person requesting subsequent examination who is not himself the applicant may only be regarded as party to the proceedings ordering subsequent examination.

Section 48

Procedure of Examination as to Substance

- (1) If the examination as to substance reveals insufficiencies, the applicant shall be so notified and invited to remedy the insufficiencies; depending on the character of the latter, the application shall be divided or a declaration made.
- (2) If the National Office of Inventions finds, at the expiration of the time limit fixed, that the patent application does not comply with the requirements of the examination, because insufficiencies have not been remedied, the division or the declaration not having been made, or despite these, it shall reject the application with the exception of the case mentioned in paragraph (3).

(3) If a patent application or utility model application relating to the same subject matter and having an earlier date of priority has also been filed, until the procedure relating to it is terminated, the other procedure shall be suspended.

(4) If proceedings have been instituted in order to settle the right to a patent application, the patent procedure shall be stayed until such proceedings are definitely terminated.

(5) The provisions set forth in paragraph (4) of Section 44 shall also be applied in the course of the examination on merits of the patent application.

Rule 24

(re Section 48 of the Law)

(1) The patent application may be refused only on the ground of insufficiencies where the applicant has been invited to remedy them or to make a declaration.

(2) Until the decision on merit has been taken, the National Office of Inventions may hold a further examination in respect of any condition for patentability and decide in the light of its results whether a patent can be granted.

(3) The applicant may request the out-of-turn examination of the patent application if the expeditious judgement is required by a vital interest of national economy.

Section 49

Amendment and Division

(1) The applicant shall be entitled to amend the description, the claims and the drawings until the decision granting the patent becomes definitive.

(2) If the applicant has claimed patent protection for two or more inventions in one application, he may divide the application until the date fixed in paragraph (1).

Rule 25

(re Section 49 of the Law)

(1) Only changes in the contents of the description and drawings that are within the framework of the original description and drawings may be regarded as amendments.

(2) Combination of applications is acceptable as amendment if the applicants and the inventors are the same, provided that the thus-obtained application may be regarded as uniform. In case of an amendment made by drawing together applications having different filing dates, the applicant may maintain the earliest filing date and the priority of the individual claims.

Section 50

Publication

(1) The patent application shall be published, after eighteen months from the date of

priority, by the National Office of Inventions in the Gazette of Patents and Trademarks, by indicating the particulars and substance of the application.

(2) Any person may inspect the patent application published and on payment can obtain copies of it.

(3) Publication may be postponed if there is a reason to do so.

(4) For the interest of the national economy or for other reasonable interest, in case of complete examination the publication may be omitted.

Rule 26

(re Section 50 of the Law)

(1) Any person may make comments on the published patent application at the National Office of Inventions. The comments shall be considered when judging the application.

(2) The person making the comments is not a party in the application procedure.

Section 51

Opposition

Repealed under Section 24 (5) (a) of Decree Law No. 5 of 1983.

Rule 27

(re Section 51 of the Law)

Repealed under Section 14 (3) of Decree No. 4/1983.

Section 52

Grant of Patent

(1) Depending on the results of the application procedure, the National Office of Inventions shall grant a patent in respect of the subject matter of the application or it shall reject the application.

(2) The patentee shall receive a patent document from the National Office of Inventions. The printed description and drawings shall be appended to the document. The grant of the patent shall be recorded in the Patent Register and published in the Official Gazette of the National Office of Inventions.

Rule 28

(re Section 52 of the Law)

(1) The decision granting the patent shall contain the following items:

(a) the reference number;

- (b) the title and class of the patent;
 - (c) the name (or trade name) and address (or office) of the patentee;
 - (d) the filing date;
 - (e) the particulars of the priority;
 - (f) information on the amount of the annual fee, date and manner of payment;
 - (g) the date of the grant of the patent;
 - (h) the signature and seal of the National Office of Inventions;
- (2) The patent document shall be transmitted to the patentee and to the inventor of an employee invention. It shall contain the following items:
- (a) the number of registration and the reference number of the patent;
 - (b) the title of the patent;
 - (c) the name (or trade name) and address (or office) of the patentee;
 - (d) the inventor's name, occupation and address;
 - (e) the filing date;
 - (f) particulars of the priority;
 - (g) the signature of the President of the National Office of Inventions or his deputy;
 - (h) the seal of the National Office of Inventions.
- (3) The documents of a patent granted by omitting the publication may be inspected by any person from the time of the announcement of the grant and, on payment, copies thereof can be obtained by any person.
- (4) If the patentee surrenders a patent granted by omitting the publication, with retroactive effect to its origin within thirty days after the granting decision has become definitive, the announcement of the grant of patent and the printing of the description do not take place, and the documents may be inspected only by the patentee, the inventor and their representative.

CHAPTER IX. PROCEDURE IN THE NATIONAL OFFICE OF INVENTIONS IN MATTERS OF GRANTED PATENTS ➡

Section 53

Declaration of Expiration of Patent Protection

Expiration of patent protection under Section 29 and items (a) to (c) of Section 30 shall be

pronounced by a decision of the National Office of Inventions; it shall be recorded in the list of published applications or in the Patent Register, whichever applies, and published in the Gazette of Patents and Trademarks.

Section 54

Revocation Procedure

(1) Any person may request the revocation of a patent. The request, together with the documents in proof, shall be filed at the National Office of Inventions with a copy for each patentee plus one additional copy. The request shall state the grounds (Section 32 (1)) upon which it is based; the originals of the documents in proof or certified copies thereof shall be appended to the request.

(2) The National Office of Inventions shall forward the request for revocation with its appendices to the patentee and shall invite him to make a statement. Following the written preparatory work, the National Office of Inventions shall pronounce its decision on revocation in a hearing.

(3) If the request for revocation has been refused, the procedure may be continued ex officio. No agreement may be entered into during the course of the procedure.

(4) The losing party shall be enjoined to pay the cost of the revocation procedure.

Rule 29

(re Section 54 of the Law)

(1) Where the application for revocation does not comply with the requirements prescribed, the applicant requesting revocation shall be invited to remedy the insufficiencies. If the applicant fails to do so, the application shall be dismissed.

(2) Several applications requesting revocation of the same patent shall be dealt with together.

(3) Where, by a decision taken on merits, an application for revocation is finally dismissed, revocation proceedings may not be taken out against the same patent on the same grounds.

(4) Repealed under Section 14 (3) of Decree No. 4/1983.

Section 55

Procedure for a Decision on Non-Infringement

(1) The petitioner shall submit his request for a decision on non-infringement to the National Office of Inventions, together with a description of the product manufactured or to be manufactured, or of the process applied or to be applied and an indication of the patent in question. The National Office of Inventions shall pronounce its decision on non-infringement in a hearing.

(2) The costs of the procedure for a decision on non-infringement shall be borne by the

petitioner.

Rule 30

(re Section 55 of the Law)

(1) A request for a decision on non-infringement and its attachments including a description of the relevant patent, shall be submitted to the National Office of Inventions in a number of copies one more than the number of patentees. Where the request does not comply with the requirements prescribed, the applicant shall be invited to remedy its insufficiencies. If he fails to do so, the request shall be dismissed.

(2) A request for a decision on non-infringement may be submitted only in respect of one patent.

(3) The National Office of Inventions shall forward the request and its attachments to the patentee to enable him to make a declaration. After written preparatory proceedings a decision on non-infringement shall be taken at a hearing.

Section 56

Interpretation of the Description

In the event of controversy concerning the interpretation of the patent description, the National Office of Inventions shall, at the request of the competent court or other authority, give an expert opinion.

CHAPTER X. COURT PROCEDURE IN PATENT CASES ➡

Section 57

Review of Decisions Taken by the National Office of Inventions

(1) On request, the court may review the decisions of the National Office of Inventions taken with regard to:

- (a) granting a patent;
- (b) declaring patent protection to have expired, or restoring patent protection;
- (c) revoking a patent;
- (d) ruling on non-infringement.

(2) Any person who took part as a party in the proceedings at the National Office of Inventions may request that the decision be reviewed; the inventor of the employee invention and the public prosecutor may also request that the decision be reviewed.

(3) The period within which the request for review shall be submitted shall be thirty days from the day on which the party was notified of the decision.

(4) The request shall be submitted to the National Office of Inventions which shall forward it

to the court with the documents of the patent within fifteen days.

(re Section 57 of the Law)

DCP* Rule 1

* Decree No. 9/1969. (XII. 28.) IM on Court Proceedings in Patent Matters

(1) The requirements for a request to review a decision of the National Office of Inventions are the same as for complaint.

(2) Where a party files his application to the National Office of Inventions out of time, the court shall decide whether to consider the same (Section 62 of the Law).

DCP Rule 2

(1) The applicant shall be a party in the court proceedings. The public prosecutor instituting proceedings shall be entitled to all the rights to which the party is entitled, but he may make no agreement and he may neither waive rights nor admit rights.

(2) Where the adverse party has taken part in the proceedings before the National Office of Inventions, the court proceedings shall be brought against him.

DCP Rule 3

(1) Where a joint patentee acts independently to maintain and protect patent rights (Section 16 (5) of the Law) or where the proceedings have been brought against one only of the joint patentees, the court shall notify the other joint patentees that they may be joined in the proceedings with the joint patentee.

(2) Save with regard to agreement or to admission or waiver of rights, in cases provided for in paragraph (1) the legal acts of a joint patentee party to the proceedings are binding on any other joint patentee who is not a party in the proceedings or who has failed to observe a time limit or to perform a required act, provided that he has not subsequently remedied his omission.

(3) In cases provided for in paragraph (1), where the acts and declarations of the joint patentees parties in the proceedings differ, the court shall make a decision in this respect taking into account all other relevant material in the case.

Section 58

Jurisdiction

(1) Court proceedings for the review of decisions taken by the National Office of Inventions shall be under the exclusive jurisdiction of the Metropolitan Court.

(2) The Supreme Court shall be competent to deal with appeals lodged against decisions of the Metropolitan Court.

Section 59

Composition of the Court

The bench of the Metropolitan Court shall consist of three professional judges, two of whom shall possess a superior technical or equivalent qualification.

(re Section 59 of the Law)

DCP Rule 4

(1) Two members of the bench of the Metropolitan Court may be taken from professional judges possessing a degree from a technical university or from a scientific university in biology, physics, chemistry or pharmacy.

(2) The Minister of Justice may accept other professional qualifications as equivalent.

Section 60

Application of the Provisions of the Code of Civil Procedure

(1) In cases involving requests for the review of a decision on a patent, the Court shall proceed in accordance with the rules of "non-contentious" civil procedure, subject to the exceptions mentioned in this Chapter. The public prosecutor shall enjoy all rights which he otherwise has under such procedure.

(2) The court of first instance shall take evidence in accordance with provisions of the Code of Civil Procedure and shall conduct a trial. If the case can be settled on the basis of documentary evidence, the court may take a decision without a trial, but the party, on request, shall be heard.

(3) The decision taken by the said court shall be subject to appeal before the court of second instance in accordance with the provisions of the Code of Civil Procedure; that court may also take evidence within certain limits.

(re Section 60 of the Law)

DCP Rule 5

(1) The court may, on request of a party, exclude the public from the hearing or from the delivery of the verdict, notwithstanding that the formal requirements prescribed in Section 7 of the Code of Civil Procedure are not fulfilled.

(2) Should the court try the case without a hearing but find during the proceedings that such hearing is necessary (for example, in order to hear a party or to take evidence), it may at any time order such hearing. But where the court tries a case with a hearing, or has ordered a hearing, it may not revoke this decision and pass judgement without a hearing.

(3) The Court of Appeal shall examine evidence at a hearing.

DCP Rule 6

(1) Any person having a legal interest in the outcome of a patent case may take part in the proceedings and - until such time as final judgement is given - may be joined with the party

whose interests he shares.

(2) Save with respect to agreement or to admission or waiver of rights, a person so intervening in the proceedings may take any action which the party he supports is entitled to take; but his acts shall have effect only where the party concerned has failed to perform such acts or where his acts do not conflict with those of the party concerned.

(3) Any legal dispute between the person intervening and the party concerned may not be decided in the course of the proceedings.

(4) Decisions and documents disclosed to the party concerned shall also be made known to the person intervening.

DCP Rule 7

(1) Where neither the applicant nor any of the parties appear at the hearing, or where none of the parties appear before the court within a given time when invited to do so, the court shall try the application on the basis of the material at its disposal.

(2) Conciliation may not be reached in the court proceedings if such conciliation was not possible in the proceedings before the National Office of Inventions.

DCP Rule 8

(1) Should a party wish during the court proceeding is to amend the scope claimed by extending his rights under the patent, the court shall stop the proceedings and refer the case back to the National Office of Inventions for new proceedings.

(2) A request to amend the scope claimed, extending the rights under the patent, may also be filed with the National Office of Inventions during the proceedings. The National Office of Inventions shall notify the court of this fact. In this case the court shall proceed as laid down in paragraph (1).

(3) Where a party requests a court decision on a question which was not raised in the proceedings before the National Office of Inventions, the court shall refer this request to the National Office of Inventions.

Section 61

Incompatibility

(1) In addition to the persons listed in Sections 13 to 15 and 21 of the Code of Civil Procedure, no one shall consider the case and shall act as judge if he:

(a) participated in taking the decision at the National Office of Inventions;

(b) is a relative, former husband or wife - as stated by Section 13 (2) of the Code of Civil Procedure - of a person mentioned under (a) above.

(2) The provisions of paragraph (1) shall also apply to court reporters and experts.

Section 62

Restoration of Rights

The provisions of Section 38 shall apply to claims for the restoration of rights in "non-contentious" proceedings of the court.

Section 63

Representation

In addition to the persons listed in Section 67 (1) of the Code of Civil Procedure, patent attorneys may also act as representatives.

(re Section 63 of the Law)

DCP Rule 9

The rules for patent attorneys as representatives are the same as for representatives in civil procedure cases, with the further provision that they may charge expenses and fees for their work.

Section 64

Decisions

(1) If the court changes a decision taken in a patent case, the court judgement shall replace the decision of the National Office of Inventions.

(2) The court shall invalidate the decision and order the National Office of Inventions to start a new procedure if:

(a) a person against whom incompatibility can be invoked participated in the taking of the decision;

(b) important rules of procedure before the National Office of Inventions were infringed during the procedure which cannot be remedied by the court;

(c) in case of rejecting the patent application for formal reasons the applicant remedies the insufficiencies simultaneously with filing the request for review.

(re Section 64 of the Law)

DCP Rule 10

(1) The court shall decide on the merits, as well as on other questions, and adopt a judgement.

(2) Where, after the filing of an application, the National Office of Inventions revokes or annuls a decision upon which the application was based, the court shall stop the proceedings. If the National Office of Inventions has changed its decision, the court proceedings may only continue in respect of questions still pending.

(3) Where an adverse party takes part in the court proceedings, the question of the

preliminary deposit and the payment of costs shall be dealt with according to the provisions governing litigation costs. In the absence of an adverse party, the applicant shall advance a sum to cover the costs.

DCP Rule 11

(1) The court's judgment on the merits shall be communicated in writing.

(2) The judgement of the court of first instance not appealed against becomes final on the fifteenth day commencing from the last day of the period during which appeal was possible.

Section 65

Review to Safeguard Legality

No request for revision is admissible in case of final decisions concerning amendment of decisions under Section 57 (1) of the National Office of Inventions.

CHAPTER XI. PATENT LITIGATION ➔

Section 66

Jurisdiction

(1) Court proceedings concerning the grant, modification or revocation of a compulsory license, the establishment of a right of prior working of the patent, and proceedings for patent infringement shall be under the exclusive territorial and material jurisdiction of the Metropolitan Court.

(2) In these proceedings, the bench of the Metropolitan Court shall be composed as prescribed in Section 59.

(3) In the court proceedings referred to in paragraph (1) the provisions of the Code of Civil Procedure as well as the provisions of Sections 61 and 63 of this Law shall apply.

(4) In any other patent litigation not mentioned in paragraph (1), the county courts (or the Metropolitan Court) shall proceed in accordance with the general rules.

(re Section 66 of the Law)

DCP Rule 12

The provisions of Section 9 shall apply to patent attorneys acting in litigation referred to in Section 66 (1) of the Law. The provisions for exclusion of the public set out in Section 5 (1) shall apply to litigation referred to in Section 66 of the Law.

Part III. Special Provisions Concerning Plant Varieties and Animal Breeds ➔

Section 67

Requirements for the Protection of Plant Varieties by Patents

A plant variety is patentable if it is distinguishable, novel, homogeneous, stable and it has been given a variety denomination apt for registration.

Rule 31

(re Section 67 of the Law)

(1) A plant variety is distinguishable if it definitely differs by one or more important characteristics from any other plant variety whose existence is a matter of common knowledge at the priority date.

(2) A plant variety is novel if it has not yet been offered for sale or marketed, with the agreement of the breeder or his successor in title:

(a) in the country earlier than one year before the priority date;

(b) abroad in case of vines and trees earlier than six years, in case of other plants earlier than four years, before the priority date.

(3) A plant variety is homogeneous if its individuals - having regard to the differences due to the particular features of reproduction - are identical.

(4) A plant variety is stable if the essential characteristics of its individuals, after successive reproductions, or at the end of reproduction cycles specified by the applicant, concur with the description.

(5) The variety denomination must be able at the priority date to identify the variety. As a variety denomination particularly such a designation may not be used which consists solely of figures - except where this is an established practice for designating varieties -, is liable to mislead, is the name of an already existing variety of the same botanical species or of a related species, or is contrary to law or socially accepted moral rules.

Section 68

Rights and Obligations Derived from the Protection of Plant Varieties by Patents

(1) Under the patent granted for a plant variety the patentee's exclusive right of exploitation extends to:

(a) the production for purposes of commercial marketing, the offering for sale or the marketing of the propagating material - as such - of the plant variety;

(b) the repeated utilization of the plant variety for the production of another plant variety for purposes of commercial marketing;

(c) the utilization as propagating material, for purposes of commercial marketing, of ornamental plants marketed for purposes other than propagation.

(2) The propagating material of the patented plant variety may be exported only by the authorization of the patentee to a country in which the plant variety is not under a protection

similar to that provided by this law.

(3) The patent protection shall have a duration, beginning on the date of granting the protection, of eighteen years for vines and trees, and of fifteen years for other plants.

(4) The patentee is obliged to maintain the plant variety during the period of the patent protection.

Rule 32

(re Section 68 of the Law)

The whole plant, seed or other part of the plant capable of reproduction shall be considered as propagating material.

Section 69

Examination in Merit of Applications Concerning Plant Varieties

The National Office of Inventions shall perform the examination in merit of the application in regard to the following points:

(a) whether the subject matter of the application is not excluded from patent protection under Section 6 (3) (a) and (b);

(b) whether the description and the claims comply with the legal requirements;

(c) whether the requirement of the unity of the invention is complied with;

(d) whether the application is entitled to the claimed right of priority;

(e) whether the subject matter of the application is distinguishable, novel, homogeneous, stable, and whether the variety denomination is apt for registration;

(f) whether there is no other patent application or patent relating to the same plant variety and having an earlier right of priority.

Rule 33

(re Section 69 of the Law)

(1) The distinctness, homogeneity and stability of the plant variety shall be assessed on the basis of the results of experimental testing, carried out in the course of qualification by the State or, failing this, ordered by the National Office of Inventions. The experimental testing shall be carried out in the territory of the country by an organization designated by the Ministry of Agriculture.

(2) The result of the experimental testing carried out by a competent foreign organization may be taken into consideration in the patent procedure in case of reciprocity. In the question of reciprocity the standpoint of the President of the National Office of Inventions is decisive.

(3) The data relative to the patentability of the plant variety may be filed by the applicant within four years after the expiration of the priority term.

(4) The experimental testing may be inspected by the applicant.

(5) The expenses of the experimental testing ordered by the National Office of Inventions shall be borne by the applicant.

Section 69/A

Nullification of a Patent Granted for a Plant Variety, Cancellation of the Variety Denomination

(1) The patent granted for a plant variety shall be declared null and void:

(a) with retroactive effect to its origin, if the plant variety was not distinguishable or novel, or if its subject coincides with that of a patent having an earlier priority;

(b) with effect from the date of the relevant decision if the patentee does not comply with the obligation provided for in paragraph (4) of Section 68.

(2) If the variety denomination had not been apt for registration, it should be cancelled and another variety denomination should be specified.

Section 70

Application of General Provisions

(1) The patented plant variety may be put into public production only after having been qualified by the State.

(2) Otherwise, the provisions of Chapters I to XI shall apply mutatis mutandis to plant varieties.

Rule 34

(re Section 70 of the Law)

Repealed under Rule 14 (3) of Decree 4/1983.

Rule 35

(re Section 70 of the Law)

Repealed under Rule 14 (3) of Decree 4/1983.

Section 71

Protection of Animal Breeds by Patents

The provisions of Sections 67 to 70 shall apply mutatis mutandis to the protection of animal

breeds by patents on the understanding that the duration of patent protection shall be twenty years from the filing date.

Rule 36

(re Section 71 of the Law)

The provisions of Rules 31 to 33 shall apply mutatis mutandis also to animal breeds.

Part IV. Final Provisions ➔

Section 72

- (1) This Law shall enter into force on January 1, 1970.
- (2) Out-of-date repealing and transitory provisions.
- (3) Out-of-date repealing and transitory provisions.
- (4) The Government shall be authorized to issue regulations on the remuneration for inventions, as well as on the fulfilment of international obligations.
- (5) Provisions on the certification by the State of plant varieties and animal breeds shall be laid down by the Government.
- (6) Repealed under Section 63 (b) of Law No. XI of 1987.
- (7) The Minister for Justice shall be authorized to issue in cooperation with the President of the National Committee of Technical Development and with the President of the National Office of Inventions, detailed rules on court procedure in patent cases, as well as regulations concerning the qualification of the members of the bench dealing with cases concerning the protection of industrial property.

Rule 37

(re Section 72 of the Law)

- (1) This Decree shall enter into force on January 1, 1970. In respect of proceedings already pending and of patents already granted - with the exceptions set out in paragraphs (2) to (5) - the provisions of the Law and of this Decree shall apply from January 1, 1970.

DCP Rule 14

The present Decree shall enter into force on January 1, 1970. Simultaneously, Section 1 of Decree No. 1/1958. (II. 16.) IM shall be repealed.