

Law No. XXXIII of 1995 on the Protection of Inventions by Patents

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In order to promote technical progress in the Hungarian national economy, to implement up-to-date technology, to encourage inventors both morally and financially; and in conformity with the international obligations of the Republic of Hungary concerning the protection of intellectual property, the Parliament enacts the following Law:

PART I. INVENTIONS AND PATENTS ➔

***Chapter I. Subject Matter of Patent Protection* ➔**

Patentable Inventions

Article 1

(1) Patents shall be granted for any inventions which are new, involve an inventive activity and are susceptible of industrial application.

(2) The following in particular shall not be regarded as inventions within the meaning of paragraph (1):

- (a) discoveries, scientific theories and mathematical methods,
- (b) aesthetic creations,
- (c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers,
- (d) presentations of information.

(3) Patentability of the subject matters referred to in paragraph (2) shall be excluded only to the extent to which a patent application or the patent relates to such subject matter as such.

Novelty

Article 2

- (1) An invention shall be considered 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 description or oral communication, by use, or in any other way, before the date of priority.
- (3) The content of any national patent application or utility model application - or of any application equivalent to a national filing - having an earlier date of priority shall be also considered as comprised in the state of the art, provided that it was published or announced in the course of the application procedure at a date following the date of priority. The content of such an application published under an international treaty shall only be considered as comprised in the state of the art if the Hungarian translation of the application has been filed in compliance with the provisions of special legislation. For the application of these provisions, the abstract shall not be considered as comprised in the content of the application.
- (4) The provisions of paragraphs (1) to (3) shall not exclude the patentability of any substance (compound) or composition, comprised in the state of the art, for use in methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body, provided that use for such methods is not comprised in the state of the art.

Article 3

For the application of Article 2, a disclosure of the invention that occurred no earlier than six months preceding the date of priority shall not be taken into consideration as part of the state of the art if

- (a) it was due to an abuse of the rights of the applicant or his predecessors in title or
- (b) it was due to the fact that the applicant or his predecessors in title have displayed the invention at an exhibition specified in an announcement by the President of the Hungarian Patent Office published in the Hungarian Official Gazette.

Inventive Activity

Article 4

(1) An invention shall be considered to involve an inventive activity if, in 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 activity, the part of the state of the art referred to in Article 2(3) shall not be taken into consideration.

Industrial Application

Article 5

(1) An invention shall be considered susceptible of industrial application if it can be made or used in any kind of industry or agriculture.

(2) Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body shall, in particular, not be regarded as susceptible of industrial application. This provision shall not apply, however, to products, in particular substances (compounds) or compositions, for use in such methods.

Patentability

Article 6

(1) Patent protection shall be granted for an invention if

(a) it satisfies the requirements of Articles 1 to 5 of this Law and is not excluded from patent protection under the terms of paragraph (2) and

(b) the relevant application complies with the requirements laid down by this Law.

(2) No patent protection may be granted for an invention if the publication or exploitation thereof would be contrary to public policy or morality; exploitation may not be regarded as contrary to public policy merely because it is prohibited by law or regulation.

(3) Plant varieties and animal breeds may be granted patent protection under the provisions of Chapters XIII and XIV.

Chapter II. Rights and Obligations Deriving from an Invention and from a Patent ➡

Moral Rights of the Inventor and his Rights Concerning the Disclosure of the Invention

Article 7

(1) The person who has created an invention shall be deemed to be the inventor.

(2) Unless a final court decision rules to the contrary, the person mentioned as such in the

application filed at the accorded filing date shall be deemed to be the inventor.

(3) If two or more persons have made an invention jointly, their shares of authorship shall be regarded as equal in the absence of an indication to the contrary.

(4) Unless a final court decision rules to the contrary, the shares of authorship stated in the application filed at the accorded filing date or as determined under paragraph (3) shall be deemed applicable.

(5) The inventor shall have the right to be mentioned as such in the patent documents. Published patent documents shall not mention the inventor if he so requests in writing.

(6) The inventor shall be entitled to institute legal proceedings under the Civil Code against any person contesting his authorship or otherwise infringing his moral rights deriving from the invention.

(7) Prior to the publication of the patent application, an invention may only be disclosed with the consent of the inventor or his successor in title, as appropriate.

Right to a Patent

Article 8

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

(2) Unless a final court decision or other official decision rules to the contrary, the right to a patent shall belong to the person who filed the application with the earliest date of priority.

(3) If two or more persons have created an invention jointly, the right to the patent shall belong to them or their successors in title jointly. Where two or more persons are entitled to the right, it shall be deemed to belong to them equally unless otherwise provided.

(4) If two or more persons have created an invention independently of each other, the right to the patent shall belong to the inventor, or his successor in title, who filed the application with the earliest date of priority.

Service Inventions and Employee Inventions

Article 9.

(1) A service invention is an invention made by a person who, by reason of his employment, is under the obligation to develop solutions in the field of the invention.

(2) An employee invention is an invention made by a person who, without being under an obligation by reason of his employment, makes an invention, the exploitation of which falls within the field of business of his employer.

Article 10.

(1) The right to a patent for a service invention shall belong to the employer as successor in title to the inventor.

(2) The right to a patent for an employee invention shall belong to the inventor, but the employer shall be entitled to exploit the invention. The employer's right of exploitation shall be non-exclusive; the employer may not grant a license to exploit the invention. If the employer ceases to exist or if any of his organizational units are separated, the right of exploitation shall be transferred to his successor in title; it may not be assigned or transferred in any other way.

Article 11

(1) The inventor shall notify his employer of any service or employee invention immediately following its creation.

(2) Within 90 days from receipt of the notification the employer shall make a declaration to the effect that he does or does not claim title to the service invention and state his intentions concerning the exploitation of the employee invention.

(3) The employer may only exploit an employee invention subject to the right of the inventor to disclose his invention (Article 7(7)).

(4) The inventor may dispose of a service invention if the employer gives his consent or fails to make the declaration under paragraph (2).

(5) The right to a patent for an employee invention shall belong to the inventor and shall not be subject to the employer's right of exploitation if the employer gives his consent or fails to make the statement under paragraph (2).

Article 12.

(1) The employer shall file a patent application within a reasonable time following the receipt of the notification of a service invention; he shall furthermore proceed with all due diligence to obtain a patent.

(2) Provided the patentability of the invention at the date of receipt of the notification has been acknowledged by the employer and the invention is kept secret and exploited within the trade as such, the employer may forego the filing of a patent application or may withdraw the application. The employer shall notify the inventor of such decision.

(3) In the event of a dispute, the burden of proving that a solution was not patentable at the date of receipt of the notification shall be on the employer.

(4) Prior to any act or any intentional omission liable to prevent the obtaining of a patent with regard to a service invention, the employer shall be required - except for the case under paragraph (2) - to offer to assign to the inventor the right to a patent free of charge, subject or not to the right of exploitation applicable to employee inventions.

(5) The provisions of paragraph (4) shall not apply where the inventor has already received fair remuneration having regard to the provisions of this Law.

Remuneration for Service Inventions

Article 13

(1) Where a service invention is utilized, the inventor shall be entitled to remuneration:

(a) if the invention is protected by a patent from the beginning of its utilization up to the expiration of the definitive patent protection;

(b) if the definitive patent protection lapses due to surrender or failure to pay the maintenance fee by the employer, from the beginning of the utilization up to the date on which the patent would have lapsed because of expiration;

(c) if the invention is kept secret from the beginning of the utilization up to the disclosure of the invention or up to 20 years from the date on which the employer is notified of the invention, whichever expires later.

(2) The following shall be considered utilization of a service invention:

(a) the exploitation of the invention (Article 19), including failure to exploit in order to create or to maintain an advantageous market position;

(b) the grant of an exploitation license to third parties;

(c) the total or partial assignment of the right to a patent or of the patent.

(3) The inventor shall be entitled to separate remuneration for each exploitation license and for each assignment, even if the license is granted or the assignment made without valuable consideration. The entitlement to remuneration shall not be affected should one or more elements of the patent claim be replaced in the product or in the process by improved elements made available by the inventor.

(4) Remuneration shall be paid by the employer or, in the case of a joint patent and in the absence of an agreement of the joint patentees to the contrary, by the patentee exploiting the invention. In the case of an exploitation license or assignment, the acquirer of the rights may assume the obligation to pay remuneration.

(5) Remuneration shall be due in the case of utilization based on a foreign patent or other legal title of protection having the same effect; however, no remuneration for the exploitation shall be due if the inventor is entitled to remuneration on the basis of a national patent.

(6) Remuneration for the inventor shall be governed by a contract concluded with the employer, with the exploiting patentee or the person acquiring the rights (contract of remuneration).

(7) Remuneration for the exploitation of the invention shall be commensurate with the royalty the employer or the exploiting patentee would have to pay on the basis of a patent license agreement, taking into account the licensing conditions in the technical field of the subject matter of the invention.

(8) In the case of an exploitation license or of assignment of the patent, the remuneration shall be commensurate with the value of the license or the assignment or with the benefit deriving from a license or assignment without valuable consideration.

(9) In assessing remuneration, the proportions under paragraphs (7) and (8) shall be determined taking into account the employer's contribution to the invention concerned and the duties of the inventor arising from his employment. Where an invention is kept secret, the disadvantages caused to the inventor by failure to obtain protection shall also be

considered.

Remuneration for the Exploitation of an Employee Invention

Article 14.

(1) Remuneration for the right to exploit an employee invention shall be paid by the employer or, in the case of more than one employer and in the absence of an agreement to the contrary, by the employer exploiting the invention.

(2) The remuneration of the inventor shall be governed by a contract concluded with the employer.

(3) The amount of the remuneration for the right to exploit an employee invention shall be equal to that which would be payable by the employer for a license, on the basis of a patent license agreement, taking into account the licensing conditions in the technical field of the subject matter of the invention.

Common Provisions Relating to Service and Employee Inventions

Article 15

(1) The contract of remuneration, the contract governing remuneration due in the case of the exploitation of an employee invention, as well as any disclosure, statement, notification or information relating to service and employee inventions as prescribed by this Law shall be made in writing.

(2) No derogation by contract from the provisions of this Law safeguarding the interests of the inventor shall be permissible with respect to rights and obligations deriving from service and employee inventions.

Article 16

(1) All disputes concerning the service or employee character of an invention, the patentability of an invention kept secret or the remuneration due to the inventor of a service or employee invention shall be heard by the courts.

(2) The Board of Experts for Inventions at the Hungarian Patent Office shall, on commission or at the request of the court, give an expert opinion on matters concerning the patentability of an invention kept secret and remuneration due to the inventor of a service or employee invention.

(3) Members of the Board of Experts shall be appointed by the President of the Hungarian Patent Office for a period of five years from amongst the appropriately qualified persons proposed, in particular, by national interest groups of employers, employees and inventors, the Chamber of Patent Attorneys and national economic chambers, and from amongst the officials of the Hungarian Patent Office. Detailed rules on the Board of Experts shall be laid down by special legislation.

Article 17

In the case of inventions created by civil servants, by professional members of the armed forces and of the police - persons in service relationships - or by members of a cooperative

in a legal relationship equal to employment, the provisions of Articles 9 to 16 shall apply *mutatis mutandis*.

Establishment of Patent Protection

Article 18

(1) Patent protection shall begin with the publication of the patent application. The protection shall be effective retroactively from the date of the application.

(2) Protection resulting from publication shall be provisional. It shall become definitive if a patent for the invention is granted to the applicant.

Rights Conferred by the Patent

Article 19

(1) Patent protection shall afford the owner of the patent (patentee) the exclusive right to exploit the invention.

(2) On the basis of the exclusive right of exploitation, the patentee shall be entitled to prevent any person not having his consent,

a) from making, using, putting on the market or offering for sale a product which is the subject matter of the invention, or importing the product for such purposes;

b) from using a process which is the subject matter of the invention or, where such other person knows, or it is obvious from the circumstances, that the process cannot be used without the consent of the patentee, from offering the process for use;

c) from making, using, putting on the market, offering for sale or importing for such purposes a product obtained directly by a process which is the subject matter of the invention.

(3) On the basis of the exclusive right of exploitation, the patentee shall also be entitled to prevent any person not having his consent from supplying or offering to supply a person, other than a person entitled to exploit the invention, with means (instruments, appliances) relating to an essential element of the invention, for carrying out the invention, when such person knows, or it is obvious from the circumstances, that those means are suitable and intended for carrying out the invention.

(4) The provisions of paragraph (3) shall not apply when the supplied or offered means are staple commercial products, except when the supplier or offerer deliberately induces his client to commit the acts referred to in paragraph (2).

(5) For the application of paragraph (3), persons performing acts not falling under the exclusive right of exploitation, as referred to in paragraph (6), shall not be considered persons entitled to exploit the invention.

(6) The exclusive right of exploitation shall not extend to:

(a) acts done privately or not involved in an economic activity;

(b) acts done for experimental purposes relating to the subject matter of the invention, including experiments and tests necessary for the registration of medicines;

(c) preparation for individual cases, in a pharmacy, of a medicine in accordance with a medical prescription, or acts concerning the medicine so prepared.

(7) In the absence of proof to the contrary, a product shall be deemed to have been obtained by a patented process if the product is new and 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 shall exist, in particular, when the patented process is the only known process.

Exhaustion of the Exclusive Right of Exploitation Conferred by Patent Protection

Article 20

The exclusive right of exploitation conferred by patent protection shall not extend to acts concerning a product put on the domestic market by the patentee or with his express consent.

Limitations of Patent Protection

Article 21

(1) A right of prior use shall belong to any person who, in good faith, before the date of priority, in the territory of the country and within the framework of his economic activities, had begun to make or use the subject matter of the invention or had made serious preparations for that purpose.

(2) A prior user shall be considered a bona fide user until it is proved that the prior use was based on the inventive activity that led to the patented product.

(3) Patent protection shall have no effect against a prior user in relation to the extent of making, using or preparation existing at the priority date. The right of prior use may only be transferred together with an entitled economic organization (Civil Code, Article 685 (c)) or with that part of the economic organization in which such making, using or preparation has taken place.

(4) A right of continued use shall belong to any person who, in the period between a declaration of lapse of patent protection and restoration thereof, in the territory of the country and within the framework of his economic activities, has started to make or use the subject matter of the invention or has made serious preparations for that purpose. The provisions of paragraph (3) shall apply mutatis mutandis to the right of continued use.

(5) Subject to reciprocity, patent protection shall have no effect with respect to means of communication and transport which are in transit in the territory of the country or to foreign goods which are not intended to be put on the market in the country. The President of the Hungarian Patent Office shall be competent to give a ruling on matters of reciprocity.

Term of Patent Protection

Article 22

Definitive patent protection shall have a term of 20 years beginning on the filing date of the application.

Maintenance of Patent Protection

Article 23

(1) Annual patent fees, to be determined by special legislation, shall be paid during the term of patent protection. The fee for the first year shall be due on the filing date and the fees for the subsequent years shall be payable in advance on the anniversaries of the filing date.

(2) The annual fees which become due before the publication of the patent application shall be payable within a period of grace of six months from the date of publication, the annual fees which become due before the grant of a patent treated as a State secret shall be payable within a period of grace of six months from the date on which the decision on the grant comes into effect, and all other annual fees shall be payable within a period of grace of six months from the due date.

Scope of Patent Protection

Article 24

(1) The scope of protection conferred by a patent shall be determined by the claims. The claims shall be interpreted on the basis of the description and the drawings.

(2) Patent protection shall cover any product or process in which all the characteristics of the claim are embodied.

(3) The terms of the claims shall not be confined to their strict literal wording; neither shall the claims be considered mere guidelines for a person skilled in the art to determine the claimed invention.

Succession in Title

Article 25

Rights deriving from an invention and from patent protection, with the exception of moral rights, may be transferred, assigned and pledged.

Joint Right to a Patent and Joint Patent

Article 26

(1) Where there are two or more patentees for the same patent, each of the joint patentees may dispose of his own share. Where one joint patentee wishes to dispose of his share, the other joint patentees shall enjoy a right of preemption with respect to third parties.

(2) The invention may be exploited by any one of the joint patentees alone; however, he shall be obliged to pay appropriate remuneration to the other joint patentees, in proportion to their shares.

(3) An exploitation license may only be granted to a third party jointly by the joint patentees.

Collective consent may be replaced by a court decision under the general provisions of civil law.

(4) In the event of doubt, the shares of all joint patentees shall be deemed equal. If one of the joint patentees surrenders his patent protection, the rights of the other joint patentees shall extend to his share, in proportion to their own shares.

(5) Any one of the joint patentees may also act individually to maintain and protect patent rights. His legal acts - compromise, recognition and waiver of rights excepted - shall be binding on any other joint patentee who has failed to observe a time limit or to perform a required act, provided that such other joint patentee has not subsequently remedied his omission.

(6) Where the acts of the joint patentees are divergent, a decision shall be taken having regard to all other relevant facts in the procedure.

(7) Costs relating to the patent are to be borne by the joint patentees in proportion to their shares. If, despite being notified, a joint patentee does not pay the costs for which he is liable, the joint patentee who has paid those costs may claim assignment to him of the share belonging to the joint patentee having not met his obligations.

(8) The provisions concerning joint patents shall apply mutatis mutandis to joint patent applications.

Chapter III. Exploitation Contracts ➔

Conclusion of Exploitation Contracts

Article 27

(1) Under a contract of exploitation (patent license contract) the patentee licenses the right to exploit an invention and the person exploiting the invention (licensee) is required to pay royalties.

(2) The parties shall be free to determine the contents of the exploitation contract . However, any clause conflicting with the prohibition on restricting economic competition by agreement or having a purpose incompatible with the social functions of the rights conferred by a patent shall be null and void.

(3) Refusal to conclude an exploitation contract shall not in itself constitute abuse of a dominant economic position.

Rights and Obligations of the Parties

Article 28

(1) The patentee shall guarantee for the whole duration of the exploitation contract, that no third parties hold rights in the patent preventing or limiting exercise the right of exploitation. This guarantee shall be subject to the rules applicable to a vendor who transfers proprietary rights, except that the licensee may, instead of cancellation, terminate the contract with immediate effect.

(2) The patentee shall also guarantee the technical feasibility of the invention. The same

rules shall apply to this guarantee as to the legal consequences of faulty performance, except that the licensee may, instead of cancellation, terminate the contract with immediate effect.

(3) The exploitation contract shall cover all patent claims and every mode of exploitation, to any extent whatsoever, without limitation in time or as to territory.

(4) A right of exploitation shall be exclusive only if expressly stipulated by contract. In the case of an exclusive exploitation license, the patentee may also exploit the invention in addition to the licensee who has acquired the right of exploitation, unless expressly excluded by contract. The patentee may terminate the exclusivity of a license, subject to a proportional reduction in the royalty, if the licensee does not begin exploitation within a reasonable period of time.

(5) The patentee shall inform the licensee of any third party rights in relation to the patent and of any other important circumstances. However, he shall be obliged to transfer economic, technical and organizational know-how only if this has been expressly agreed.

(6) The licensee may transfer the license or grant sub-licenses to third parties only with the express consent of the patentee.

(7) The patentee shall maintain the patent.

Termination of the Exploitation Contract

Article 29

The exploitation contract shall terminate, with effect for the future, when the contractual period expires or when certain specified circumstances occur or when the patent expires.

Effect of Provisions Relating to Exploitation Contracts

Article 30

(1) The parties may derogate by mutual consent from the provisions relating to exploitation contracts where not prohibited by law.

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

Chapter IV. Compulsory Licenses ➡

Compulsory Licenses for Lack of Exploitation

Article 31

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 exploited 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 its domicile in the

country (Article 685(c) of the Civil Code is relevant for defining persons in this category), unless the patentee justifies the lack of exploitation.

Compulsory Licenses in Respect of Dependent Patents

Article 32

(1) If the patented invention cannot be exploited 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 exploitation 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) with respect to a dominant patent, the owner of such a patent shall be entitled on reasonable terms to a license to exploit the invention claimed in the dependent patent according to the common provisions on compulsory licenses.

General Provisions on Compulsory Licenses

Article 33

(1) An applicant for a compulsory license shall be required to prove that the requirements for a compulsory license have been complied with, and further that

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

(b) he is able to exploit the invention to the required extent.

(2) The scope and duration of a compulsory license shall be established by the court, taking into account the purpose of the exploitation authorized by the compulsory license; a compulsory license may be granted with or without limitation. Unless relinquished or cancelled, a compulsory license shall have effect until expiration of the term of validity fixed by the court or until the lapse of patent protection. Compulsory licenses 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 compensation shall take into adequate account the economic value of the compulsory license. In particular, it shall be commensurate with the royalty the holder of the compulsory license would have paid on the basis of an exploitation contract concluded with the patentee, taking into account the licensing conditions in the technical field of the invention.

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

(5) If an enterprise holding a compulsory license ceases to exist or if any of its organizational units are separated, the compulsory license shall be transferred to the successor in title. A compulsory license granted with respect to 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 of exploitation.

(6) The holder of a compulsory license may relinquish his compulsory license at any time. If the holder does not begin exploitation within one year from the definitive grant of the compulsory license, 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 occur again. Modification or cancellation shall take a form that does not prejudice the legitimate interests of the holder of the compulsory license.

Chapter V. Infringement of Inventions and Patents ➡

Infringement of Inventions

Article 34

Where the subject matter of a patent application or a patent has been taken unlawfully from the invention of another person, the injured party or his successor in title may claim a statement to the effect that he is entitled wholly or partly to the patent and may claim damages under the rules of civil liability.

Infringement of Patents

Article 35

(1) Any person who unlawfully exploits a patented invention 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 that the infringer cease his 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) require surrender of the enrichment obtained by infringement of the patent;

(e) request the seizure of the means used for infringement and of the infringing products.

(3) The court may rule, according to the circumstances of the case, that the infringing nature of the means and products seized be removed or, where this is not possible, that they be destroyed. In place of destruction, the court may order that the means and products seized be auctioned according to court procedure; in such case, the court shall decide how the sum obtained is to be used.

(4) Where a patent is infringed, the patentee may also claim damages under the rules of civil liability.

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

Article 36

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

(2) In the event of patent infringement, the holder of a contractual license may invite the patentee to take appropriate action in order to stop the infringement. If the patentee fails to take action within 30 days from the invitation, the licensee recorded in the Patent Register may institute proceedings for patent infringement in his own name.

Ruling on Lack of Infringement

Article 37

(1) Any person believing that proceedings for patent infringement may be instituted against him may, prior to the institution of such proceedings, request a decision ruling that the product or process exploited or to be exploited by him does not infringe a particular patent specified by him.

(2) Where a final ruling on lack of infringement has been given, infringement proceedings may not be instituted in respect of the patent or in respect of the product or process specified in the ruling.

Chapter VI. Lapse of Patent Protection ➡

Lapse of Provisional Patent Protection

Article 38

Provisional patent protection shall lapse ex tunc:

- (a) if the patent application is definitely rejected;
- (b) if the annual fees have not been paid by the end of the period of grace;
- (c) if the applicant has relinquished protection.

Lapse of Definitive Patent Protection

Article 39

Definitive patent protection shall lapse:

- (a) when the period of protection expires, on the day following the date of expiration;
- (b) if the annual fees have not been paid by the end of the period of grace, on the day following the due date;

(c) if the patentee relinquishes the protection, on the day following receipt of the relinquishment or at an earlier date specified by the person relinquishing protection;

(d) if the patent is revoked, with retroactive effect to the filing date of the application.

Restoration of Patent Protection

Article 40

(1) If patent protection has lapsed by reason of failure to pay annual fees, protection shall be restored at the request of the applicant or the patentee.

(2) Restoration of patent protection may be requested within three months following the expiry of the period of grace. A fee determined by special legislation shall be payable within that time limit.

Relinquishment of Patent Protection

Article 41

(1) The applicant named in the Register of Patent Applications or the patentee named in the Patent Register may relinquish patent protection by a written declaration addressed to the Hungarian Patent Office.

(2) If the relinquishment affects the rights of third parties deriving from legislation, from decisions of an authority, from a license contract or any other contract recorded in the Patent Register, or if a lawsuit is recorded in the Patent Register, it shall take effect only with the consent of the parties concerned.

(3) It shall also be possible to relinquish certain of the patent claims.

(4) Withdrawal of the relinquishment of patent protection shall have no legal effect.

Revocation and Limitation of Patents

Article 42

(1) The patent shall be revoked ex tunc:

(a) the subject matter of the patent does not satisfy the requirements laid down in Article 6(1)(a);

(b) the description does not disclose the invention in a clear and complete manner as required by this Law (Article 60(1));

(c) the subject matter of the patent extends beyond the content of the application as filed at the accorded filing date or - in the case of division - beyond the content of the divisional application.

(2) If the grounds for revocation affect the patent in part only, revocation shall be pronounced in the form of a corresponding limitation of the patent.

(3) Should the request for revocation be rejected by a final decision, a new procedure for the revocation of the same patent on the same grounds may not be instituted by any person.

Reclaiming of royalties

Article 43

If definitive patent protection lapses ex tunc, only the portion of the royalties paid to the patentee or the inventor that was not covered by the profits derived from the exploitation of the invention may be reclaimed.

PART II. PROCEDURES BEFORE THE HUNGARIAN PATENT OFFICE IN PATENT MATTERS ➡

Chapter VII . General Provisions Governing Patent Procedures ➡

Competence of the Hungarian Patent Office

Article 44

The Hungarian Patent Office is the administrative authority for industrial property with country-wide competence; it shall have authority in the following patent matters:

- (a) grant of patents;
- (b) decision on the lapse of patent protection and the restoration of patent protection;
- (c) revocation of patents;
- (d) decision on lack of infringement;
- (e) interpretation of patent descriptions;
- (f) recording of patent applications and patents, including matters concerning their maintenance;
- (g) official information on patent matters.

Application of the General Rules of Administrative Procedure

Article 45

The Hungarian Patent Office shall proceed in patent matters under its own competence, with the exceptions laid down in this Law, by applying the provisions of Law No. IV of 1957 on the general rules of administrative procedure.

Decisions of the Hungarian Patent Office

Article 46

(1) In revocation procedures, in procedures for a decision on lack of infringement and for the interpretation of a patent description, the Hungarian Patent Office shall proceed in the form of a board consisting of three members; the board shall take its decisions on a majority.

(2) Decisions on the grant of patents, on the lapse of patent protection, on the restoration of patent protection, on the revocation of patents and on lack of infringement shall be considered decisions on merits.

(3) Decisions of the Hungarian Patent Office shall take effect on service unless a review is requested.

(4) The Hungarian Patent Office may withdraw or modify its decisions on merits in patent matters only if a request for review is made and only until such request is transmitted to the court. Its decisions may not be invalidated or changed by a supervisory authority; they shall be without appeal.

(5) The decisions of the Hungarian Patent Office in patent matters may be changed by the court in conformity with the provisions of Chapter IX.

Establishment of Facts

Article 47

(1) In procedures before it, the Hungarian Patent Office shall examine the facts of its own motion, it shall not be restricted in such examination to the statements and requests of the parties. However, its decisions may only be based on facts or evidence on which the parties concerned have had an opportunity to present their comments.

(2) The parties shall be invited or notified to remedy insufficiencies of documents submitted in patent matters.

Time limits

Article 48

(1) The time limits prescribed by this Law shall not be extended. Failure to comply with such time limits shall involve legal consequences without notice.

(2) Where this Law does not prescribe any time limit to remedy insufficiencies or to submit a statement, a time limit of at least 30 days shall be fixed which may be extended on request before the expiration of the period. A time limit of more than three months and more than three extensions of a time limit may be granted only in special cases.

(3) The time limits generally prescribed to terminate administrative procedures shall not apply to patent matters.

Restitutio in integrum

Article 49

(1) In patent matters - unless excluded under paragraph (5) - a request for restitutio in

integrum may be submitted within 15 days of the unobserved time limit or of the last day of the unobserved period. The request must state the grounds of failure to comply and the circumstances showing that the failure to comply occurred without fault.

(2) Where the failure to comply became known to the party subsequently or the cause thereof was removed subsequently, the time limit shall be reckoned from the date on which the failure to comply became known or the cause thereof was removed. The request for restitutio in integrum shall only be admissible within six months of the time limit not complied with or the last day of the period not complied with.

(3) Where a time limit is not complied with, the omitted act must be carried out simultaneously with the filing of the request for restitutio in integrum or - if it is admissible - an extension of the time limit may be requested.

(4) If the Hungarian Patent Office grants restitutio in integrum, the acts carried out by the party in default shall be considered to have been performed within the time limit not complied with; a hearing held on the day not complied with shall be repeated where necessary. Depending on the outcome of the new hearing, it shall be decided whether the decision taken at the original hearing should stand or should be revoked in whole or in part.

(5) Restitutio in integrum shall be excluded:

(a) in the event of failure to comply with the time limit prescribed for filing the declaration of priority (Article 61(2)) or with the time limit of 12 months fixed for claiming convention priority;

(b) in the event of failure to comply with the time limit fixed for derivation (Article 62);

(c) in the event of failure to comply with the time limit fixed for filing the declaration of exhibition (Article 64(1)(a)) and with the time limit of six months with respect to displaying at an exhibition (Article 3(b));

(d) in the event of failure to pay the annual fees (Article 23).

Interruption and Suspension of the Procedure

Article 50

(1) In the event of the death of a party or the dissolution of a legal person, the procedure shall be interrupted until the person of the successor in title is registered and his claim justified.

(2) Where legal proceedings are instituted with respect to the entitlement to file a patent application or the right to a patent, the patent procedure shall be suspended until the court decision becomes final.

Representation

Article 51

(1) Foreign applicants shall be represented by an authorized patent attorney or an attorney-at-law, having residence in the country, in all patent matters within the competence of the Hungarian Patent Office.

(2) A power of attorney shall be drawn up as a public instrument or as a private paper having the force of evidence. A power of attorney given to a patent attorney or an attorney-at-law shall be valid only if signed by the principal.

(3) The Hungarian Patent Office shall appoint a trustee from among the patent attorneys and attorneys-at-law:

(a) for unknown heirs or for a party whose whereabouts are unknown, at the request of the adverse party, or

(b) for a foreign party not having an authorized representative.

Use of Languages

Article 52

(1) The language of patent procedure shall be Hungarian, the patent description with the claims, any text matter of the drawings and the abstract shall be in Hungarian.

(2) In patent matters, documents in foreign languages may also be filed; however, the Hungarian Patent Office may require that a translation into Hungarian, certified where necessary, be filed.

Access to Files

Article 53

(1) Prior to the publication of the patent application, only the applicant, his representative, the expert, or the body called upon to give an expert opinion may inspect the files. The inventor may inspect the files even if he is not the applicant.

(2) The following shall be excluded from inspection even after publication:

(a) draft decisions, and all other documents used for the preparation of decisions and expert opinions, which are not communicated to the parties;

(b) documents relating to the designation of the inventor if he has requested that publication of his name be waived;

(c) documents constituting State secrets.

(3) Upon payment of a fee, the Hungarian Patent Office shall issue copies of documents that may be inspected.

(4) Procedures in patent matters shall be public only if there is an adverse party participating.

(5) The President of the Hungarian Patent Office may order, at the request of the competent Minister and in the interest of national defense, that a patent application be dealt with as a State secret. In such case, publication of the application and printing of the description shall be waived and other procedures relating to the patent shall also be qualified as State secrets.

Chapter VIII. Registration of Patent Matters, Information to the Public



Register of Patent Applications, Patent Register

Article 54

(1) The Hungarian Patent Office shall keep a Register of Patent Applications and a Patent Register which shall contain all facts and circumstances concerning patent rights.

(2) The Patent Register shall contain, in particular, the following entries:

- (a) registration number of the patent;
- (b) reference number;
- (c) title of the invention;
- (d) name (official designation) and address (place of business) of the patentee;
- (e) name and place of business of the representative;
- (f) name and address of the inventor;
- (g) filing date of the application;
- (h) priority data;
- (i) date of the decision on the grant of patent;
- (j) amount of the annual fees paid and date of payment;
- (k) legal title and date of the lapse of protection and limitation of the patent;
- (l) exploitation licenses.

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

(4) Any person may have access to the Patent Register and may ask for a copy of the registered data on payment of a fee.

(5) Following publication of the applications, the provisions of paragraphs (3) and (4) shall apply mutatis mutandis to the Register of Patent Applications.

Entries in the Patent Register

Article 55

(1) Entries in the Register of Patent Applications or in the Patent Register shall be made

exclusively on the basis of decisions of the Hungarian Patent Office or court decisions. Entries on the basis of the decisions listed in Article 85(1), may only be made if no review is requested within the stipulated time limit or if the decision of the court concerning the review has become final.

(2) The Hungarian Patent Office shall decide on rights and facts relating to patent protection on the basis of a request submitted in writing. An official document or private paper providing sufficient evidence shall be attached to such request.

(3) A request shall be inadmissible if it is based on a document which is invalid due to formal defects or which lacks an official authentication required by law, or if it is clear from the contents of the document that the legal statement included therein is invalid.

(4) Where the request or its enclosures contain rectifiable defects, the applicant shall be invited to remedy them or to submit comments.

Information to the Public

Article 56

The official journal of the Hungarian Patent Office is the Gazette of Patents and Trademarks which shall contain, in particular, the following data and facts relating to patent applications and patents:

(a) on communication of certain data, the name and address of the applicant and the representative, the reference number of the application, the filing date and the date of priority where the latter is different, the number of the international publication in the case of international applications and the title of the invention;

(b) on publication of the patent application, the data listed under paragraph (a) and the name of the inventor, the international classification code of the invention, the abstract with the characteristic figure, as well as a statement whether publication is to take place after the preparation of the search report;

(c) after the grant of patent, the registration number, the name (official designation) and address (place of business) of the patentee, name and place of business of the representative, the reference number, the filing date of the application, the date of priority, the title of the invention, the international classification code of the patent, the name and address of the inventor and the date of the decision on grant;

(d) legal title and date of the lapse of patent protection, limitation of the patent, and the restoration of patent protection.

Chapter IX. Patent Granting Procedure ➡

Filing of Patent Application and Requirements

Article 57

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

(2) A patent application shall contain a request for the grant of patent, a description of the

invention with one or more claims, an abstract, drawings where necessary, and other relevant documents.

(3) Detailed formal requirements to be complied with by patent applications shall be laid down by special legislation.

(4) A patent application shall be subject to the payment of a filing fee and a search fee determined by special legislation; the fees shall be payable within two months after the date of filing.

(5) Where the documents making up the patent application have been prepared in a foreign language, the patent description with the claims, the abstract and the drawings shall be filed in Hungarian within four months after the date of filing.

(6) Until publication, the applicant may withdraw the patent application in compliance with the provisions of Article 41. The Hungarian Patent Office shall take note of the withdrawal by a decision.

Date of Filing

Article 58

(1) The filing date of an application shall be the date on which the application filed with the Hungarian Patent Office contains at least:

- (a) an indication that a patent is sought,
- (b) information identifying the applicant,
- (c) a description and the drawing referred to therein, even though they do not comply with other requirements.

(2) In place of the filing of a description and drawings, reference to a priority document shall suffice to accord a date of filing for the application.

Unity of Invention

Article 59

A patent application may seek patent protection for one invention only or for a group of inventions so linked as to form a single general inventive concept.

Disclosure of Invention, Claims and Abstract

Article 60

(1) A patent application shall disclose the invention in a manner sufficiently clear and detailed for it to be carried out by a person skilled in the art on the basis of the description and the drawings.

(2) The claims shall define clearly the scope of the protection sought, in accordance with the description.

(3) The abstract shall merely serve for use as technical information and may not be taken into account either for the purpose of interpreting the scope of the protection sought or for the purpose of defining the state of the art under Article 2(3).

Priority

Article 61

(1) The date establishing priority shall be:

(a) generally, the date of filing of the patent application (application priority);

(b) in the cases defined by the Paris Convention for the Protection of Industrial Property, the date of filing of the foreign application (convention priority);

(c) the date of filing of a previously filed and pending patent application for the same subject matter, which is not earlier than 12 months prior to the current filing, provided that it has not served as a basis for claiming a right of priority (internal priority).

(2) Convention and internal priority shall be claimed within two months after the filing of the application. The document establishing convention priority shall be filed within four months after the date of filing of the application.

(3) If internal priority is claimed, the previous patent application shall be considered withdrawn.

(4) Multiple priorities may be claimed for any one claim in a patent application.

(5) If one or more priorities are claimed with respect to a patent application, the right of priority shall cover only those elements that are disclosed by the application establishing the given priority in accordance with Article 60(1).

Derivation from Utility Model Application

Article 62

(1) Where the applicant has already filed a utility model application at an earlier date, he may, in his declaration of priority filed within two months after the date of filing of a patent application for the same subject matter, claim the filing date of the utility model application and the right of priority relating to such application (derivation).

(2) Derivation of a patent application shall be admissible within three months from the date when the decision on the grant of utility model protection becomes final, but not later than 20 years from the filing date of the utility model application.

Deposit and Availability of Microorganisms

Article 63

(1) If an invention involving the use of a microorganism which is not available to the public cannot be disclosed in the patent application, as required by Article 60(1), a certificate shall be filed attesting to the fact that a culture of the microorganism has been deposited under

the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

(2) If the culture of a microorganism is deposited after the filing of the patent application, the date of deposit shall be regarded as the date of filing.

(3) The certificate of deposit may be submitted within a period of four months after the date of filing.

(4) The deposited culture shall be made available by the depositary institution by furnishing samples to any person after the date of publication of the patent application and to any person having the right to inspect the files under the provisions of Article 53(1) prior to that date.

(5) The person to whom a sample of the microorganism has been furnished may not make the deposited culture or any culture derived therefrom available to any third party before the termination of the patent grant procedure or before the lapse of patent protection and, with the exception of a holder of a compulsory license, he may use the deposited culture only for experimental purposes. A derived culture is deemed to be any culture of the microorganism which still has those characteristics of the deposited culture which are essential to carry out the invention.

Declaration and Certification of Exhibition

Article 64

(1) The applicant may request under Article 3(b) that the display of his invention at an exhibition shall not be taken into consideration when the state of the art is determined, if

(a) he files a statement to this effect within two months after the date of filing of the patent application and (b) he files within four months after the date of filing of the patent application, a certificate issued by an authority responsible for the exhibition attesting to the display and date of the exhibition.

(2) The certificate must be accompanied by a description and, if necessary, drawings bearing the authentication of the authority responsible for the exhibition.

(3) The certificate may only be issued during the period of the exhibition and only while the invention or its disclosure can be seen at the exhibition.

Examination on Filing

Article 65

Following the filing of a patent application, the Hungarian Patent Office shall examine whether

(a) the application satisfies the requirements for according a date of filing (Article 58),

(b) the filing fee and the search fee have been paid (Article 57(4)),

(c) the description, the abstract and the drawings have been filed in the Hungarian

language (Article 57(5)).

Article 66

(1) If a date of filing cannot be accorded, the applicant shall be invited to correct the defects within 30 days.

(2) If the applicant complies with that invitation within the specified time limit, the date of receipt of the correction shall be accorded as the date of filing. Failing which, the patent application shall be considered withdrawn.

(3) The applicant shall be notified of the accorded date of filing.

(4) If the filing fee and the search fee have not been paid or the patent description, the abstract and the drawings have not been filed in the Hungarian language, the Hungarian Patent Office shall invite the applicant to remedy the defects within the period specified by this Law (Article 57(4) and (5)). Failing which, the application shall be considered withdrawn.

Communication of Certain Data

Article 67

If, either on filing or as a result of a correction, a patent application complies with the requirements prescribed for according a date of filing, the Hungarian Patent Office shall publish the official information specified in Article 56(a) in its official journal (communication of certain data).

Examination as to Formal Requirements

Article 68

(1) If a patent application satisfies the requirements examined under Article 65, the Hungarian Patent Office shall examine whether the formal requirements of Article 57(2) and (3) have been satisfied.

(2) Where the application does not comply with the requirements examined under paragraph (1), the applicant shall be invited to correct the defects.

(3) The patent application shall be rejected if, in spite of correction or comments, it still does not comply with the requirements under examination. An application may be rejected only for grounds precisely and expressly stated in the invitation.

(4) Where the applicant does not reply to the invitation within the fixed time limit, the patent application shall be considered withdrawn.

Novelty Search

Article 69

(1) If a patent application satisfies the requirements laid down in Article 65, the Hungarian Patent Office shall carry out a novelty search and shall draw up a search report on the basis of the claims, with due regard to the description and any drawings.

(2) The search report shall mention those documents and data which may be taken into consideration in deciding whether the invention to which the patent application relates is new and involves an inventive activity.

(3) The search report together with copies of any cited document shall be transmitted to the applicant.

(4) Information shall be published in the official journal of the Hungarian Patent Office on the search carried out simultaneously with the publication of the application, or separately if the search report is available at a later date.

Publication

Article 70

(1) A patent application shall be published after the expiry of 18 months from the earliest date of priority.

(2) At the request of the applicant, the application may be published at an earlier date if it satisfies the requirements of Article 65.

(3) Publication shall be made by giving information to the public in the official journal of the Hungarian Patent Office as laid down in Article 56(b).

(4) The applicant shall be notified of the publication.

Observations

Article 71

(1) During the patent granting procedure any person may file an observation with the Hungarian Patent Office to the effect that the invention or the application does not comply with a requirement of patentability.

(2) Such observation shall be taken into consideration when the requirement objected to in the observation is examined, .

(3) The person making the observation shall not be a party to the patent granting procedure. That person shall be notified of the outcome of his observation.

Amendment and Division

Article 72

(1) A patent application may not be amended in such a way that, by introducing new subject matter, it contains subject matter which extends beyond the content of the application at the date of filing.

(2) The applicant shall be entitled to amend the description, claims and drawings as laid down in paragraph (1) until such time as the decision on the grant of a patent becomes final.

Article 73

(1) If the applicant has claimed patent protection for more than one invention in one application, he may divide the application, retaining the date of filing and any earlier priority, until such time as the decision on the grant of a patent becomes final.

(2) A fee prescribed by special legislation shall be paid for division within two months from the filing of the relevant request.

(3) If the fee for division is not paid upon filing the request, the Hungarian Patent Office shall invite the applicant to correct the defect within the time limit fixed in paragraph (2). Failing which, the request for division shall be considered withdrawn.

Substantive Examination

Article 74

(1) The Hungarian Patent Office shall carry out a substantive examination of the published patent application at the request of the applicant.

(2) The substantive examination shall ascertain

(a) whether the invention meets the requirements of Articles 1 to 5 and whether it is not excluded from patent protection under Article 6(2) and

(b) whether the application complies with the requirements laid down by this Law.

Article 75

(1) Substantive examination may be requested simultaneously with the filing of the patent application or within six months at the latest after the date of the official information on the performance of the novelty search (Article 69(4)). Failing which, provisional patent protection shall be considered relinquished.

(2) Withdrawal of the request for substantive examination shall have no legal effect.

(3) An examination fee prescribed by special legislation shall be payable within two months from the filing of the request.

(4) If the examination fee is not paid upon filing the request, the Hungarian Patent Office shall invite the applicant to correct the defect within the time limit fixed in paragraph (3). Failing which, the application shall be considered withdrawn or the provisional patent protection shall be considered relinquished, respectively.

(5) The examination fee shall be refunded on request if before the date of the official information on the novelty search the applicant withdraws the application or relinquishes provisional patent protection.

Article 76

(1) If a patent application does not meet the requirements examined under Article 74(2), the applicant shall be invited, according to the nature of the objection, to correct the defects, to

submit comments or to divide the application.

(2) A patent application shall be rejected in whole or in part if it does not meet the examined requirements even after the correction of the defects or the submitting of comments.

(3) An application may be rejected only on grounds that have been precisely and expressly stated and duly reasoned in the invitation. Where necessary, a further invitation shall be issued.

(4) If the applicant fails to reply to the invitation or to divide the application, he shall be considered to have relinquished the provisional patent protection.

Grant of Patent

Article 77

(1) If the patent application and the invention to which it relates meet all the requirements of the examination (Article 74(2)), the Hungarian Patent Office shall grant a patent for the subject matter of the application.

(2) Before the grant of a patent, the text of the description, claims and drawings forming the basis of the grant shall be transmitted to the applicant who may notify, within three months, his approval of the text transmitted.

(3) If the applicant approves the text or fails to submit comments, a patent shall be granted on the basis of the description, claims and drawings as transmitted. If the applicant proposes amendments or files a new description, claims and drawings, the Hungarian Patent Office shall decide whether these shall be taken into account when stating the final text.

(4) Before the grant of a patent, the fees for grant and printing fixed by special legislation shall be payable within the period of three months stipulated for the statement under paragraph (2). If the applicant fails to pay those fees, he shall be considered to have relinquished the provisional patent protection.

Article 78

(1) After the grant of a patent, the Hungarian Patent Office shall issue a patent certificate to which the printed description, claims and drawings shall be annexed.

(2) The grant of the patent shall be recorded in the Patent Register (Article 54), and relevant information shall be given in the official journal of the Hungarian Patent Office (Article 56).

Chapter X. Other Procedures in Patent Matters ➡

Procedure for Declaration of Lapse and for Restoration of Patent Protection

Article 79

(1) The Hungarian Patent Office shall declare the lapse of provisional patent protection under Article 38(b) and (c) and that of definitive patent protection under Article 39(b) and

(c); it shall restore patent protection under Article 40.

(2) The lapse of patent protection and the restoration of patent protection shall be entered in the Register of Patent Applications and the Patent Register, respectively (Article 54), and relevant information shall be given in the official journal of the Hungarian Patent Office (Article 56).

Revocation Procedure

Article 80

(1) Any person may institute proceedings for revocation of a patent against the patentee under Article 42.

(2) The petition for revocation shall be filed with the Hungarian Patent Office with a copy for each patentee plus one additional copy. The petition shall state the grounds on which it is based and documentary evidence shall be annexed.

(3) A fee prescribed by special legislation shall be payable for the petition for revocation within two months from the filing of the petition.

(4) If the petition for revocation does not comply with the requirements laid down in this Law, the petitioner shall be invited to correct the defects; if the fee for the petition has not been paid, the petitioner shall be invited to make payment within the time limit fixed by this Law. Failure to remedy the defects shall result in the petition for revocation being considered withdrawn.

Article 81

(1) The Hungarian Patent Office shall invite the patentee to submit comments on the petition for revocation. Following the written preparatory work, it shall decide at a hearing on the revocation or limitation of the patent or on the refusal of the petition.

(2) If there is more than one petition for revocation of the same patent, they shall be dealt with together.

(3) If the petition for revocation is withdrawn, the procedure may be continued ex officio.

(4) The losing party shall be required to bear the costs of the revocation procedure.

(5) The revocation or limitation of the patent shall be recorded in the Patent Register (Article 54) and relevant information shall be given in the official journal of the Hungarian Patent Office (Article 56).

Procedure for a Decision on Lack of Infringement

Article 82

(1) A request for a decision on lack of infringement (Article 37) shall be filed with the Hungarian Patent Office with a copy for each patentee plus one additional copy. The request shall contain the description and drawings of the product or process exploited or intended for exploitation, as well as the description and drawings of the patent involved.

(2) A request for a decision on lack of infringement may be filed only in respect of one patent.

(3) A fee fixed by special legislation shall be payable for a request for a decision on lack of infringement within two months from the filing of the request.

(4) If the request for a decision on lack of infringement does not comply with the requirements laid down in this Law, the requesting party shall be invited to correct the defects; if the fee for the request has not been paid, that party shall be invited to make payment within the time limit fixed by this Law. Failure to correct the defects shall result in the request for a decision on lack of infringement being considered withdrawn.

Article 83

(1) The Hungarian Patent Office shall invite the patentee to submit comments on the request for a decision on lack of infringement. Following the written preparatory work, it shall decide at a hearing whether the request shall be admitted or refused.

(2) The requesting party shall bear the costs of the procedure for a decision on lack of infringement.

Interpretation of Patent Description

Article 84

In the case of a dispute concerning the interpretation of the patent description, the Hungarian Patent Office shall give an expert opinion at the request of the competent court or other authority.

PART III. COURT PROCEEDINGS IN PATENT CASES ➔

Chapter XI. Review of Decisions of the Hungarian Patent Office ➔

Request for Review

Article 85

(1) Upon request, the court may review decisions on merits taken by the Hungarian Patent Office (Article 46(2)) as also its decisions declaring interruption of procedure, suspending procedure or furnishing a basis for entries in the Register of Patent Applications or the Patent Register.

(2) Any party to procedures before the Hungarian Patent Office may request review of a decision.

(3) Review of a decision on the revocation of a patent may also be requested by the inventor of a service invention. Review of a decision on the grant and revocation of a patent may be requested by the public prosecutor under Article 6(2).

(4) The request for review must be filed within 30 days from the date of notification of the decision to the party concerned or to the inventor of a service invention.

(5) The request shall be filed with the Hungarian Patent Office which shall forward it, together with the documents of the patent file, to the court within 15 days.

(6) The rules concerning complaints shall apply *mutatis mutandis* to the requirements for a request for review .

(7) In the case of a request filed late, the court shall decide on the request for *restitutio in integrum*.

Jurisdiction and Competence

Article 86

(1) In proceedings for the review of decisions taken by the Hungarian Patent Office, the Metropolitan Court shall have jurisdiction and exclusive competence.

(2) In appeals lodged against decisions of the Metropolitan Court, the Supreme Court shall have jurisdiction.

Composition of the Court

Article 87

The Metropolitan Court shall sit in a chamber consisting of three professional judges of whom two shall have technical university degrees or equivalent qualifications.

Rules Governing Proceedings Concerning Requests for Review

Article 88

The court shall hear requests for the review of decisions taken by the Hungarian Patent Office in accordance with the rules of non-contentious civil procedure, subject to the exceptions mentioned in this Law. Unless this Law or the non-contentious nature of the procedure indicates otherwise, the rules of the Code of Civil Procedure shall apply to the proceedings *mutatis mutandis*.

Publicity

Article 89

The court may, at the request of a party, exclude the public from the hearing or from the pronouncing of the decision notwithstanding the fact that the requirements prescribed in the general provisions of the Code of Civil Procedure may not be fulfilled.

Incompatibility

Article 90

(1) In addition to the cases determined in the general provisions of the Code of Civil Procedure, the following persons shall be excluded from participating in the proceedings or from acting as judges:

- (a) persons who participated in taking the decision of the Hungarian Patent Office;
- (b) relatives, as defined in the general provisions of the Code of Civil Procedure relating to the incompatibility of judges, of a person mentioned under (a), above.
- (2) The provisions of paragraph (1) shall also apply to the persons keeping records of evidence and to the experts.

Parties to the Proceedings and Other Participants

Article 91

- (1) The person who filed the request shall be a party to the court proceedings. The public prosecutor instituting proceedings shall be entitled to all the rights to which a party is entitled, except that he may not agree to a compromise nor relinquish or recognize rights.
- (2) Where an adverse party has also taken part in the procedure before the Hungarian Patent Office, the court proceedings shall be initiated against that party.

Article 92

Where a joint patentee acts independently to maintain and protect patent rights, or proceedings have been initiated against one only of the joint patentees, the court shall notify the other joint patentees that they may join the proceedings.

Article 93

- (1) Any person having a legal interest in the outcome of the proceedings for review of decisions taken by the Hungarian Patent Office may intervene in the proceedings, until such time as the court decision becomes final, in favor of the party whose interests he shares.
- (2) Save for compromise, recognition and relinquishment of rights, the intervenor may take any action which the party he supports is entitled to take, except that his acts shall have effect only where they do not conflict with the acts of the party concerned.
- (3) Any legal dispute between the intervenor and the party concerned may not be decided in the course of the proceedings.

Representation

Article 94

- (1) Patent attorneys may also act as representatives in proceedings.
- (2) The power of attorney given to a patent attorney or an attorney-at-law shall be valid only if signed by the principal.

Costs of Proceedings

Article 95

(1) Where an adverse party also takes part in the court proceedings, the provisions on litigation costs shall apply mutatis mutandis to the preliminary deposit and payment of the costs of proceedings.

(2) In the absence of an adverse party, the applicant shall advance and meet the costs.

(3) The expenses and fees of the patent attorney representing the party shall be added to the costs of proceedings.

Omission

Article 96

Where neither the applicant nor any of the parties appear at the hearing or where none of the parties respond to the invitation of the court in the fixed time limit, the court shall decide on the request on the basis of the material at its disposal.

Restitutio in integrum

Article 97

The provisions of Article 49 shall apply mutatis mutandis to the submission of a request for restitutio in integrum in non-contentious proceedings.

Hearing and Taking of Evidence

Article 98

(1) The court of first instance shall take evidence and shall hold its hearings in accordance with the provisions of the Code of Civil Procedure.

(2) If no adverse party takes part in the proceedings and the case can be settled on the basis of documentary evidence, the court may take a decision without a hearing, but the party shall be heard at his request.

(3) Should the court consider the case without a hearing, but find during the proceedings that a hearing is necessary, it may at any time order such hearing. However, where the court considers the case at a hearing, or has ordered a hearing, it may not revoke such order and consider the case without a hearing.

(4) Compromise may not be reached in the court proceedings if such compromise was not possible in the procedure before the Hungarian Patent Office.

Decisions

Article 99

The court shall decide both on the merits of a case and on other matters by a judgment.

Article 100

(1) If the court changes a decision taken in a patent case, the judgment shall replace the

decision of the Hungarian Patent Office.

(2) The court shall repeal a decision and order the Hungarian Patent Office to start a new procedure if:

(a) the decision was taken with the participation of a person who could be objected to on the grounds of incompatibility;

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

(c) the patent application has been rejected for formal reasons and the applicant remedies the defects simultaneously with the filing of a request for review or at the invitation of the court.

(3) Where a party requests a court decision on a matter which was not the subject of the procedure before the Hungarian Patent Office, the court shall refer the request to the Hungarian Patent Office. In such case the court shall, if necessary, repeal the decision of the Hungarian Patent Office.

(4) Where, after the filing of a request for review, the Hungarian Patent Office withdraws or repeals its decision since it does not qualify as taken on merits, the court shall terminate the proceedings. If the Hungarian Patent Office has changed its decision, the court proceedings may only continue in respect of matters still pending.

Article 101

The court judgment on the merits of a case shall be communicated by service.

Court Proceedings at Second Instance

Article 102

(1) The court of second instance shall decide on appeals lodged against decisions of the court of first instance in accordance with the provisions of the Code of Civil Procedure except that it may also take limited evidence at a hearing.

(2) The court of second instance shall decide on appeals at a hearing if an adverse party also takes part in the proceedings.

Exclusion of Request for Reconsideration

Article 103

No request for reconsideration is admissible in respect of final court decisions on the amendment of decisions of the Hungarian Patent Office.

Chapter XII. Patent Litigation ➔

Rules Governing Patent Litigation

Article 104

(1) The Metropolitan Court shall have jurisdiction and exclusive competence in court proceedings concerning the grant, modification or cancellation of a compulsory license, the establishment of prior or continued use and concerning the infringement of an invention or a patent.

(2) In such proceedings, the chamber of the Metropolitan Court shall be composed as laid down in Article 87.

(3) Any other patent litigation not mentioned under paragraph (1) shall be heard by the county courts (or Metropolitan Court).

(4) The general provisions of the Code of Civil Procedure shall apply in the court proceedings referred to under paragraphs (1) and (3), with the exceptions laid down in Articles 89, 90, 94 and 95(3) of this Law.

PART IV. PATENT PROTECTION FOR PLANT VARIETIES AND ANIMAL BREEDS ➔

Chapter XIII. Provisions Concerning Plant Varieties ➔

Conditions of Patent Protection for Plant Varieties

Article 105

(1) A plant variety shall be patentable if it is distinct, uniform, stable and new and has been given a denomination suitable for registration.

(2) The variety shall be deemed to be distinct if it clearly differs by one or more morphological or other measurable characteristics from any other variety whose existence is a matter of common knowledge at the date of priority.

(3) The variety shall be deemed to be uniform if the relevant characteristics of its individuals are identical.

(4) The variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or at the end of each cycle of propagation.

(5) The variety shall be deemed to be new if it has not been offered for sale or marketed with the consent of the breeder or his successor in title:

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

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

(6) The denomination must, at the date of priority, be such that the variety may be identified. In particular, it may not consist solely of figures except where this is an established practice for designating varieties, it must not be liable to mislead, it must be different from the denomination of an existing variety of the same or closely related plant species and its use must not be contrary to public policy or morality.

Rights and Obligations Deriving from Patent Protection for Plant Varieties

Article 106

(1) A patent granted for a plant variety shall confer on the patentee the exclusive right in respect of:

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

(b) the repeated use of the plant variety for the commercial production of another variety;

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

(2) Entire plants, seeds or other parts thereof suitable for propagation shall be considered propagating material.

(3) 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 does not enjoy protection similar to that provided by this Law.

(4) Patent protection shall have a duration of 15 years from the date of the grant of a patent or, in the case of trees and vines, of 18 years from such date.

(5) The patentee shall be required to maintain the plant variety during the period of patent protection.

(6) Where a plant variety has been qualified by the State, the inventor shall be entitled, at the patentee's discretion, to remuneration or to other compensation under the provisions on State qualification of plant varieties.

Substantive Examination of Applications Concerning Plant Varieties

Article 107

(1) A patent application may only seek patent protection for a single plant variety.

(2) The substantive examination of the application carried out by the Hungarian Patent Office shall ascertain:

(a) whether the plant variety meets the requirements laid down in Article 105 and is not excluded from patent protection under Article 6(2);

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

(3) The distinctness, uniformity and stability of the plant variety shall be assessed in the course of qualification by the State or on the basis of the results of experimental testing carried out for the purposes of patent procedure. The experimental testing shall be carried out in the territory of the country by an organization designated in special legislation.

(4) The results of experimental testing carried out by a competent foreign organization may

be taken into consideration in the patent procedure with the consent of such organization subject to reciprocity. In the matter of reciprocity, the standpoint of the President of the Hungarian Patent Office shall be decisive. The Hungarian Patent Office shall notify the organization mentioned under paragraph (3) of the acceptance of the results of foreign testing.

(5) The cost of experimental testing shall be borne by the applicant.

(6) The results of experimental testing may be filed by the applicant within four years following the date of priority.

Revocation of Patent Granted for a Plant Variety, Cancellation of Variety Denomination

Article 108

(1) A patent granted for a plant variety shall be revoked

(a) *ex tunc*, if the plant variety was not distinct or new or was excluded from patent protection under Article 6(2),

(b) with effect from the date at which the relevant decision has become final, if the patentee does not comply with the obligations provided for in Article 106(5).

(2) The variety denomination shall be cancelled if it was not suitable for registration and another variety denomination shall be given.

Application of General Provisions

Article 109

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

(2) In any other matters, the provisions of Chapters I to XII shall apply *mutatis mutandis* to plant varieties and their patent protection.

Chapter XIV. Provisions Concerning Animal Breeds ➔

Conditions of Patent Protection for Animal Breeds; Right to Grant of Patent

Article 110

(1) An animal breed shall be patentable if it is distinct and new and has been given a denomination suitable for registration. Where an animal breed does not fall within the scope of the Law on Livestock Breeding, patentability shall also be subject to reproducibility of the animal breed.

(2) The animal breed shall be deemed distinct if it clearly differs in one or more assessment characteristics from any other breed whose existence is a matter of common knowledge at the date of priority.

(3) The animal breed shall be deemed reproducible if its assessment characteristics remain

unchanged through several generations.

(4) The animal breed shall be deemed new if it has not been offered for sale or marketed with the consent of the breeder or his successor in title earlier than one year before the date of priority.

(5) The denomination must, at the date of priority, enable the animal breed to be identified. In particular, it may not consist solely of figures except where this is an established practice for designating breeds, it must not be liable to mislead, it must be different from the denomination of an existing breed of the same or a closely related animal species and its use must not be contrary to public policy or morality.

(6) In the case of State approved breeds, the right to a patent shall belong to the person applying for approval or to his successor in title.

Rights and Obligations Deriving from Patent Protection of Animal Breeds

Article 111

(1) A patent granted for an animal breed shall confer on the patentee an exclusive right in respect of

(a) the production for the purposes of commercial marketing, the offering for sale or the marketing of the propagating material, as such, of the animal breed,

(b) the repeated use of the animal breed for the commercial production of another breed.

(2) The animal itself (individual), sperms, ova, eggs suitable for hatching, embryos, or any other biological units or parts influencing or controlling propagation (e.g. parts of genes, cells) shall be considered propagating material.

(3) The propagating material of the patented animal breed may be exported only with the authorization of the patentee to a country in which the animal breed does not enjoy protection similar to that provided by this Law.

(4) Patent protection shall have a duration of 20 years from the date of filing of the application.

Substantive Examination of Applications Concerning Animal Breeds

Article 112

(1) A patent application may only seek patent protection for a single animal breed.

(2) The substantive examination of the application carried out by the Hungarian Patent Office shall ascertain:

(a) whether the animal breed meets the requirements laid down in Article 110(1) to (5) and is not excluded from patent protection under Article 6(2),

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

(3) The distinctness and reproducibility of the animal breed shall be assessed in the course of State approval or on the basis of the results of experimental productivity testing carried out for the purposes of patent procedure. The experimental testing shall be carried out in the territory of the country by an organization designated in special legislation.

(4) The result of experimental productivity testing carried out by a competent foreign organization may be taken into consideration in the patent procedure with the consent of such organization and subject to reciprocity. In the matter of reciprocity, the standpoint of the President of the Hungarian Patent Office shall be decisive. The Hungarian Patent Office shall notify the organization mentioned under paragraph (3) of the acceptance of the results of foreign testing.

(5) The results of experimental productivity testing may be filed by the applicant within four years following the date of priority.

(6) The cost of experimental productivity testing shall be borne by the applicant.

Revocation of Patent Granted for an Animal Breed, Cancellation of Denomination

Article 113

(1) A patent granted for an animal breed shall be revoked ex tunc if the animal breed was not distinct or new or was excluded from patent protection under Article 6(2).

(2) The denomination shall be cancelled if it was not suitable for registration and another denomination shall be given.

Application of General Provisions

Article 114

(1) A patented animal breed falling within the scope of the Law on Livestock Breeding may be put into public production only after State approval.

(2) In any other matters, the provisions of Chapters I to XII shall apply mutatis mutandis to animal breeds and their patent protection.

PART V. FINAL PROVISIONS ➡

Chapter XV. Entry Into Force; Transitional Provisions ➡

Rules Establishing Provisions Concerning the Entry Into Force of this Law and Transitional Provisions

Article 115

(1) This Law shall enter into force on January 1, 1996; its provisions shall apply - with the exceptions set out in paragraphs (2) and (5) - only in procedures started after its entry into force.

(2) The provisions of Article 49 shall also apply mutatis mutandis to pending matters.

(3) Where a contract of remuneration or a patent license agreement was concluded or a service invention was utilized before the entry into force of this Law, the provisions valid at the time of the conclusion of the contract or of the utilization shall apply.

(4) Exploitation commenced before the entry into force of this Law shall be subject to the previously applicable provisions with respect to the scope and limitations of patent protection and patent infringement.

(5) The registration, maintenance, lapse and restoration of patents valid at the date of entry into force of this Law shall be subject to the provisions of this Law except that, with respect to the conditions of revocation of the patent, the provisions applicable at the date of priority shall be decisive.

(6) Following the entry into force of this Law, the National Office of Inventions shall continue to operate under the name "Hungarian Patent Office". Any mention of the National Office of Inventions in legislation shall mean the Hungarian Patent Office.

Repealed Provisions

Article 116

Simultaneously with the entry into force of this Law, the following shall be repealed:

(a) Law No. II of 1969 on the Protection of Inventions by Patents, as amended by Decree Law No. 5 of 1983, Article 39 of Law No. XXXVIII of 1991, Article 3(1) of Law No. IV of 1992, Article 23 of Law No. LXVIII of 1992 and Articles 1 to 6 of Law No. VII of 1994;

(b) Articles 29(4) and 34(2) of Law No. XXXVIII of 1991 on Utility Model Protection;

(c) Decree No. 77/1989 (VII.10.) MT Concerning Remuneration to be Paid for Employee Inventions and Certain Other Measures Related to Inventions;

(d) Joint Decree No. 4/1969 (XII.28.) OMFB-IM on the execution of Law No. II of 1969 on the Protection of Inventions by Patents as amended by Decree No. 4/1983 (V.12.) IM, and Article 1 of Decree No. 11/1986 (IX.11.) IM;

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

Amended Provisions

Article 117

Simultaneously with the entry into force of this Law,

(a) in Article 3(6) of Law No. IV of 1957 on the General Provisions on Administrative Procedure the words "and in industrial property matters" shall be added after the words "in revenue matters";

(b) the following provisions shall be substituted for Article 8 of Law No. XXXVIII of 1991 on Utility Model Protection:

"Article 8. The provisions on service and employee inventions shall apply mutatis mutandis

to utility models created by persons working in employment or in civil service, by professional members of the armed forces and of the police - persons in service relationship - or by members of a co-operative working within the framework of a legal relationship of an employment nature.";

(c) the following provision shall be substituted for Article 37(2) of the Law on Utility Model Protection:

"(2) Any person who took part as a party in the procedure before the Hungarian Patent Office may request that the decision be reviewed. Review of the decision on the revocation of utility model protection may be requested by the inventor of the employee utility model as well. Review of the decision on the grant and revocation of utility model protection may be requested by the public prosecutor under Article 6(2)."

Authorization

Article 118

(1) The Minister of Justice shall be authorized to establish by decree, in agreement with the President of the Hungarian Patent Office, the detailed formalities for patent applications.

(2) The Minister supervising the Hungarian Patent Office shall be authorized to establish by decree the detailed rules concerning the board of experts for inventions.