

Law on Inventions, Industrial Designs and Rationalisation Proposals

(No. 527 of November 27, 1990)

as amended by the Law Amending some Laws on the Protection of the Industrial Property

(No. 116 of April 6, 2000)

§ 1

Purpose of the Law

The purpose of this Law is to regulate the rights and obligations deriving from the creation and working of inventions, industrial designs and rationalisation proposals.

PART ONE

Inventions

Chapter I

Patent for invention

§ 2

The Industrial Property Office (hereinafter referred to as "the Office") shall grant patents for inventions which meet the requirements set out in this Law.

§ 3

Patentability of Inventions

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

(2) **The following in particular shall not be regarded as inventions within the meaning of subsection (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) presentation of information.

(3) The patentability of the subject-matter or activities referred to in Section 2 is excluded only to the extent to which an application or a patent relates to such subject-matter or activities as such.

(4) Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body shall not be regarded as inventions which are susceptible of industrial application within the meaning of subsection (1). This provision shall not apply to products, in particular substances or compositions for use in any of these methods.

§ 4

Exclusions from Patentability

Patents shall not be granted in respect of:

(a) inventions the exploitation of which would be contrary to "order public" or morality; this fact may not be concluded merely because the exploitation of invention is prohibited by law;

(d) plant or animal varieties or essentially biological processes for the production of plants or animals; this provision shall not apply to microbiological processes and the products thereof.

§ 5

Novelty

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

(2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use or in any other way, prior to the date from which the right of priority belongs to the applicant.

(3) The state of the art shall also comprise the content of applications for inventions filed in the Czech Republic which enjoy earlier priority and have been published only on the date on which the applicant's priority right began or at a subsequent date (§ 31). This provision shall also apply to the international applications of inventions with the earlier right of priority, where the Office acts as a designated Office, and to the European patent applications (§ 35a) with the earlier right of priority where the Czech Republic is a validly designated state.

(4) The provisions of Sections (1) to (3) shall not exclude patentability of any substance or composition for use in a method referred to in § 3, Section 4, provided that its use for this method is not comprised in the state of the art.

(5) An invention shall not be considered to form part of the state of the art if its disclosure occurred no earlier than six months preceding the filing of the application and if it was due to or in consequence of:

(a) an evident abuse in relation to the applicant or his legal predecessor,

(b) the fact that the applicant or his legal predecessor has displayed the invention at an official, or officially-recognised, international exhibition within the terms of the relevant treaty.¹ In such case, it shall be for the applicant to declare, when filing the application, that the invention has been shown and to produce in support of his declaration, within a period of four months as from filing, a certificate attesting that the invention has been shown in compliance with the provisions of the said international treaty.

§ 6 Inventive Step

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

(2) However, the content of applications that have only been published as of the date on which the applicant's priority right began shall not be taken into consideration in assessing inventive step (Section 31).

§ 7 Industrial Application

An invention shall be considered as susceptible of industrial application if its subject-matter can be made or used in any kind of industry, agriculture or other fields of the economy.

§ 8 Right to Patent

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

(2) The inventor is the person who has made the invention by means of his own creative work.

(3) Joint inventors shall be entitled to a patent in the proportion in which they have participated in the creation of the invention.

Inventions Belonging to an Enterprise

§ 9

(1) Where an inventor has made an invention as part of his tasks deriving from an employment relationship, by reason of the fact that he is a member of an organisation or of any other similar employment relationship (hereinafter referred to as "the employment relationship"), the right to the patent shall pass to the employer, unless otherwise laid down by contract. The right of inventorship as such shall remain unaffected.

(2) An inventor who has made an invention within the framework of an employment relationship shall be required to report the fact without delay, in writing, to his employer and to communicate to him the documents required for assessing the invention.

(3) Where the employer does not claim the right to the patent within a period of three months as from receipt of the communication referred to in subsection (2), the right shall revert to the inventor. Both the employer and the employee shall be required to maintain the secrecy of the invention with respect to third parties.

(4) Any inventor who has made an invention under an employment relationship shall be entitled, where the employer claims the right to the patent, to appropriate remuneration from the employer. In order to assess the amount of remuneration, the technical and economic importance of the invention and the benefit obtained from possible working or other use, together with the material contribution by the employer to the making of the invention and the extent of the inventor's service obligations shall be taken into consideration. Where remuneration that has already been paid is obviously no longer proportionate to the benefit obtained from working or other subsequent use of the invention, the inventor shall be entitled to additional remuneration.

§ 10

Termination of the employment relationship between the inventor and the employer shall not prejudice the rights and obligations deriving from the provisions of Section 9.

Effect of Patent

§ 11

(1) The owner of a patent (Section 34) shall have the exclusive right to use the invention, to authorize others to use the invention or to assign the patent to others.

(2) The patent shall have effect as from the date of publication of the notification of its grant in the Official Bulletin of **the Industrial Property Office** (hereinafter referred to as "the Official Bulletin").

(3) The applicant shall be entitled to appropriate remuneration from any person who uses the subject matter of the invention application after the application has been published (§31). The right to appropriate remuneration may be asserted as from the date on which the patent has effect.

(4) An applicant filing an international application requesting grant of a patent in **the Czech Republic** and which has been published in compliance with the international treaty shall be entitled to appropriate remuneration in accordance with subsection (3) only after the translation of the application into the Czech (**text deleted**) language has been published (§ 31).

“§12

(1) The extent of the protection conferred by a patent or an invention application shall be determined by terms of the patent claims. For the interpretation of the patent claims, the description and drawings shall be used.

(2) For the period up to grant of the patent, the extent of the protection conferred by the invention application shall be determined by the terms of the patent claims contained in the application published under § 31. However, the patent, as granted or as amended in the revocation procedure under § 23, shall determine retroactively the extent of the protection conferred by the invention application, in so far as the protection is not thereby extended.

§ 13

Prohibition of direct use

Nobody shall be allowed without the consent of patentee,

- a) to make, offer, put on the market or use a product which is the subject-matter of the patent, or to import or stock the product for this purpose, it or to dispose with it by another manner;**
- b) to use a process which is the subject-matter of the patent or to offer the process for use;**
- c) to offer, put on the market, use or import or stock for this purpose the product obtained directly by a process, which is the subject-matter of the patent; identical products shall**

be held to have been obtained by means of the process, which is the subject-matter of the patent, when it is highly probable that the product was obtained by means of the process, which is the subject-matter of the patent, and in spite of reasonable effort, the patentee was not able to determinate the really used process; unless the contrary is proved. In proving the contrary, rights conferred by the trade secret protection ^{1b)} shall be respected.

§ 13 a

Prohibition of indirect use

(1) Nobody shall be allowed without the consent of patentee, to supply or offer to supply a person, other than the person authorised to use the patented invention, with the means relating to an essential element of the invention and serving in this sense to put in into effect, when it is obvious in the circumstances, that these means are suitable and intended for putting the patented invention into effect.

(2) The subsection 1 shall not apply when the means are products commonly existing on the market, unless the third person induces the purchaser to commit the act, prohibited by § 13.

(3) Persons performing the activities referred to in § 18, letter c) to e) shall not be considered as persons authorised to use the invention within the meaning of the Section 1.

§ 13 b

Exhaustion of rights

The patentee shall not be entitled to prohibit third persons to dispose with the product, which is subject-matter of the protected invention, if the product has been put on the market in the Czech Republic by the patentee or with his consent, unless there exist the reasons for the extension of patent rights to the mentioned activities.”.

§ 14

(1) The authorization to work an invention protected by a patent (licence) shall be given by written contract (hereinafter referred to as "the licence contract")

(2) The licence contract shall have effect in respect of third parties as from its entry in the Patent Register (§ 69).

§ 15

Assignment of a patent shall be effected by written contract that shall take effect in respect of third parties as from its entry in the Patent Register.

§ 16

Joint Ownership of Patent

(1) Where the rights deriving from one patent belong to more than one person (hereinafter referred to as "the joint owners"), the relationship between such persons shall be governed by the general rules of law on shares in joint ownership.²

(2) Unless otherwise agreed by the joint owners, each of them shall have the right to work the invention.

(3) Unless otherwise agreed, the conclusion of a licence contract shall require, in order to be valid, the consent of all joint owners each of the joint owners may independently take action against infringement of the rights deriving from the patent.

(4) Assignment of the patent shall require the consent of all joint owners. Failing the consent of the other joint owners, each joint owner may only assign his share to another joint owner assignment to a third party may only be effected if none of the joint owners has accepted a written offer of assignment within a period on one month.

Limitation of Effects of Patent

§ 17

(1) A patent shall not have effect *vis-a-vis* a person (hereinafter referred to as "the prior user") who has already worked the invention independently of the inventor or owner of the patent or who has made preparation therefor, that the can prove, before the priority right began (Section 27).

(2) In case of failure to reach agreement, the prior user shall be entitled to request a court or economic arbitration board, as appropriate, that his right be recognized by the owner of the patent.

§ 18

The rights of the owner of the patent shall not be infringed by use of the protected invention:

(a) on board vessels of other States party to **the Paris Convention on the Protection of Industrial Property (thereinafter “Paris Convention”)** to which **the Czech Republic (deleted text)** is party, in the body of the vessel, in the machinery, tackle, gear and other accessories, when such vessels temporarily or accidentally enter in **the Czech Republic**, provided that such use is exclusively for the needs of the vessel;

(b) in the construction or operation of aircraft or land vehicles of other Union States when those aircraft or land vehicles temporarily or accidentally enter in **the Czech Republic**.

c) in the individual preparation of a medicament in a pharmacy based on a medical prescription including acts concerning the medicament so prepared;

d) in acts done for non-commercial purposes;

e) in acts relating to the subject-matter of the invention done for experimental purposes.

§ 19

Offer of Licence

(1) If the applicant or the owner of a patent declares to the Office that he is prepared to offer use right to work the invention to any person (offer of licence), any person who accepts the offer of a licence and notifies the fact in writing to the applicant or owner shall be entitled to work the invention. The Office shall enter the offer of licence in the Patent Register.

(2) The declaration of offer of licence shall be irrevocable.

(3) The fact that a person is entitled to work the invention shall not prejudice the right of the owner of the patent to obtain compensation with respect to the value of the licence.

(4) The administrative fees for maintaining a patent in respect of which the owner has made an offer of licence under subsection (1) shall be half the amount laid down in the relevant statutory provisions.⁴

§ 20 Compulsory Licence

(1) If the patentee unreasonably does not work the invention at all or works it insufficiently and he did not accept a due offer for a licence agreement in a reasonable term, the Office, upon the justified request, may grant a non-exclusive right to use the invention (compulsory licence); the compulsory licence may not be granted before the expiry of the period of 4 years as from the filing date of the invention application or 3 years as from the grant of the patent; whichever period expires last.

(2) The compulsory licence may be also granted, where an important public interest is endangered.

(3) The Office shall establish conditions, the scope and duration of the compulsory licence in its decision concerning the granting of the compulsory licence. The compulsory licence may be granted mainly for the supply of the home market.

(4) The compulsory licence may only be assigned within the transfer of the enterprise or its part, where the entrepreneur uses the invention based on the compulsory licence (thereinafter “compulsory licence holder”).

(5) The compulsory licence holder may waive the right to use the invention during the term of duration of the compulsory licence by notification made to the Office; on the day of delivery of the notification, the effect of decision on the grant of compulsory licence lapses.

(6) The Office shall revoke a compulsory licence or change conditions, scope or duration of the compulsory licence on the request of the owner of the patent in which he shall prove that conditions for the grant of compulsory licence have been changed and are unlikely to recur or the holder does not exploit the compulsory licence during one year or does not implement conditions established by the grant of the compulsory licence.

(7) The grant of a compulsory licence shall not affect the right of the patentee for the compensation of the value of the licence. If the value of the licence is not agreed by concerned parties it shall be determined, upon request, by the court, taking into account the importance of the invention and the value of the licence contracts in the relevant technical field.

(8) The compulsory licence shall be entered in the Patent Register (§ 69).”.

§ 21 Term of Patent

(1) The term of a patent shall be 20 years as from the filing date of the application for the invention.

(2) For maintaining the patent in force, the patentee shall pay yearly administrative fees under the special regulation.)

(3) The rights of third persons, which after expiry of the time limit for payment of the fee for maintaining the patent in force, in good faith have begun to use the subject-matter of the invention or have realised serious and effective preparations to use this invention, shall not be not affected by the payment of this fee in ulterior date.

§ 22 Lapse of Patent

A patent shall lapse:

(a) on expiry of its term of validity;

(b) if the corresponding administrative fees⁵ have not been paid in good time by the owner of the patent;

(c) on relinquishment by the owner of the patent in such case, the patent shall terminate as from the date on which the Office receives a written declaration by the owner of the patent.

§ 23 Revocation of Patent

“(1) The Office shall revoke the patent, if it is ascertained subsequently:

- a) that the invention did not meet the conditions of patentability;**
- b) that the invention is not disclosed in the patent so clearly and completely, to be carried out by a person skilled in the art;**
- c) that the subject-matter of the patent extends beyond the content of the invention application as filed or the subject-matter of the patents granted on the divisional application extend beyond the content of the invention application as filed, or the extent arising from the patent was extended;**
- d) that the patentee is not entitled to it according to § 8; in this case, the Office shall carry out the revocation upon the request of the authorised person (§ 29).”.**

(2) If the grounds for revocation concern only a part of the patent, the patent shall be revoked in part. **The partial revocation of the patent shall be carried out by the amendment of claims, description or drawings.**

(3) Revocation of a patent shall have retroactive effect to the date on which the patent became valid.

(4) The request for revocation of a patent may be filed even after lapse of the patent if the person filing the request can prove a legal interest.

Chapter II Patent Granting Procedure

Invention application

§ 24

(1) The patent granting procedure shall begin with the filing with the Office of an invention application.

(2) The Office is the body with which **Czech** natural and legal persons and other natural and legal persons having their domicile or an establishment on the territory of **the Czech Republic** may file international applications.

(3) **The Office is the body with which the European patent application according to the Convention on the Grant of European Patents done at Munich on October 5, 1973 (hereinafter referred to „the European Patent Convention“) may be filed; this shall not apply in the case of a divisional European patent application.**

(4) If the European patent application or the international application contains matters that are kept secret under special regulations, the applicant shall file the application with the Office together with the approval issued by the National Security Office.

(4) The person filing an application under subsection (1) or (2) shall be required to pay an administrative fee in accordance with the relevant statutory provisions⁶ and the person filing an international application under subsection (2) shall further be required to pay for the international procedure regarding the application for the invention those fees that are laid down in accordance

with the relevant international treaty the Office shall publish the schedule of the above-mentioned fees in the Official Bulletin.

§ 25

- (1) The name of the inventor shall be mentioned in the application.
- (2) At the request of the inventor, the Office shall not mention the name of the inventor in the published application and in the announcement of the grant of the patent.

§ 26

(1) An application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept. Where a group of inventions is claimed in one and the same patent application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression „special technical features“ shall mean those features which define a contribution which each of the claimed inventions considered as a whole makes the prior art.

(2) The invention must be disclosed in the invention application in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. Where the invention concerns an industrial micro-organism for the purposes of production, the micro-organism must be kept in a public collection as from the date on which the applicant's priority right begins.

(3) Where there is a doubt, the Office may invite the applicant to provide evidence of the applicability of the invention by producing the subject matter of the application or in some other appropriate manner. If the applicant is unable to furnish such evidence, the subject matter of the application shall be deemed not to have applicability.

§ 27

- (1) The priority right of the applicant shall begin with the filing of the application.
- (2) The priority right under the Paris convention must already be claimed by the applicant in his application if invited to do so by the Office, the applicant must furnish evidence of his right within the stipulated time limit, failing which the priority right shall not be taken into consideration.

(3) The priority right under the Section 2 can be claimed, if the invention application has been filed in the state or for the state which is party to the Paris Convention or a member of the World Trade Organisation. If the state, where the first filing of the invention application is made, is neither a party of the Paris Convention, nor a member of the World Trade Organisation, the priority right can only be granted under condition of the reciprocity.

§ 28

(1) Where legal proceedings in respect of the right to a patent have been instituted before a competent organ, the Office shall suspend the procedure with respect to the application concerned.

(2) The time limits laid down by this Law shall be suspended, with the exception of the time limit laid down in Section 31 (1), for as long as the procedure is suspended.

(3) If the legitimate applicant files a request to continue the procedure within three months from the date on which the decision on the right to a patent becomes final, the priority right shall be maintained. Acts carried out for the granting of a patent prior to suspension of a procedure shall likewise be deemed valid for the continued procedure.

§ 29

(1) The Office shall transfer the invention application or the patent to the person who is the inventor in accordance with the decision taken by the court.

(2) If the organ competent to hear legal proceedings with regard to the right to a patent decides that the right belongs to another person, the Office shall replace the name of the person filing the application or of the owner of the patent with the name of such other person.

Preliminary Examination of the Invention application

§ 30

(1) All the invention applications shall be subject to a preliminary examination carried out by the Office in order to find whether:

(a) the application contains no element that is obviously contrary to the provisions of Sections 3 (1) or 26 (2),

(b) the application contains no element referred to in the provisions of Sections 3 (2) or 4,

(c) the application contains no deficiency constituting a bar to the publication,

(d) the applicant has paid the corresponding administrative fees.⁸

(2) The Office shall reject the invention application if it contains an element contrary to the provisions of Sections 3 (1) or 26 (2) or an element referred to in the provisions of Sections 3 (2)

or 4. The applicant shall be given an opportunity to make observations on the documents on the basis of which the decision has been taken, prior to rejection.

(3) If an invention application contains an element that constitutes a bar to its publication or if the applicant has not paid the corresponding administrative fee,⁹ the Office shall invite the applicant to submit his observations and to remedy any deficiencies within the set up time limit.

(4) If the applicant does not remedy the deficiencies in the invention application constituting a bar to its publication or does not pay the corresponding administrative fee¹⁰ within the stipulated time limit, the Office shall terminate the procedure. The attention of the applicant shall be drawn to such consequence.

§ 31

(1) The Office shall publish an invention application on expiry of a period of 18 months as from the date on which the priority right begins and shall announce the publication in the Official Bulletin.

(2) An invention application may be published before expiry of the time limit laid down in subsection (1) at the request submitted by the applicant within 12 months from the date on which the priority right begins and on payment of the administrative fee laid down in the relevant regulations.¹¹ The Office shall publish an invention application before expiry of the period referred to in subsection (1) if a patent has already been granted for the invention. However, if the owner of the patent does not give his consent, the Office shall not publish the application before expiry of 12 months as from the date on which the priority right begins.

(3) Together with the invention application, the Office may publish a report on the state of the art (search report) relating to an invention claimed in the application.

§ 32

(1) Following publication of an invention application, any person may submit observations on the patentability of the subject matter the Office shall take such observations into consideration when carrying out the full examination of the application.

(2) Persons who have submitted observations under subsection (1) shall not become party to the procedure with respect to the application. However, the applicant shall be informed of any observations submitted.

Full Examination of Invention application

§ 33

- (1) The Office shall carry out a full examination of the invention application to ensure that it meets the conditions for granting a patent laid down by this Law.
- (2) The full examination of an invention application shall be carried out by the Office at the request of the applicant or of another person or may be carried out ex officio.
- (3) The request for full examination shall be filed within 36 months as from the filing date of the invention application and may not be withdrawn. The person filing the request shall be required, on submitting the request, to pay an administrative fee in accordance with the relevant statutory provisions.¹²
- (4) The Office shall carry out the full examination immediately after the request has been filed.
- (5) Where no request for full examination of an invention application has been duly filed or where the Office has not carried out an ex officio examination within the period laid down in subsection (3), the Office shall terminate the procedure concerning the application.

§ 34

- (1) If the conditions for granting a patent have not been met, the Office shall reject the invention application. The applicant shall be given the possibility of submitting observations on the documents on the basis of which the decision on the application is to be taken before rejection.
- (2) If the applicant does not remedy a defect constituting a bar to the granting of a patent within the given time limit, the Office shall terminate the procedure concerning the application. The attention of the applicant shall be drawn to such consequence of failure to comply when the time limit is stipulated.
- (3) If the subject matter of the invention application satisfies the stipulated conditions and if the applicant has paid the fee laid down in the relevant statutory provisions,¹³ the Office shall grant a patent to the applicant who shall thereupon become the owner of the patent. The Office shall issue to the owner of the patent letters patent in which the name of the inventor shall be

mentioned the description of the invention and the claims shall form an integral part of the letters patent a notice of the grant of the patent shall be published in the Official Bulletin.

§ 35

If more than one invention application relating to the same subject matter is filed, only one patent can be granted.

Chapter III

European Patent application and European patent

§ 35 a

(1) A European patent application with effects for the Czech Republic (hereinafter “European patent application”), which has been accorded a date of filing shall have the same effect in the Czech Republic as an invention application filed according to § 24 on the same date. If the European patent application enjoys a priority right from a date preceding the date of filing the European patent application, this earlier date shall apply for according the effects of the application.

(2) If the European patent application was withdrawn or if it is considered to be withdrawn, it shall have the same effects as the termination of the procedure on the invention application under § 64 Section 2. If the European patent application was rejected, it shall have the same effects as the rejection of the invention application under § 34 Section 1.

(3) The reestablishment of rights by the European Patent Office to the applicant of the European patent application, or to the owner of the European patent with effects for the Czech Republic (hereinafter “European patent”) shall also apply in the Czech Republic.

(4) If the European patent application has been published by the European Patent Office, the applicant has presented the translation of patent claims to the Czech language and paid the administrative fee for making the translation available under the special rules,⁴⁾ the Office makes the translation available to the public and announces this fact in the Bulletin. The applicant can then claim a reasonable compensation according to § 11, Section 3, if the patent, granted by the European Patent Office has effects in the Czech Republic (§ 35c).

(5) The content of the European patent application, determined by the wording of the European patent in the language, in which the European patent application has been

proceeded before the European Patent Office, shall be decisive for the interpretation of the scope of protection conferred by the European patent application; if the protection conferred by the European patent is larger than the protection conferred by the published European patent application, the protection shall only be granted in the scope, which is conferred both by the published European patent application and the granted European patent. If the translation of patent claims according to the Section 4 doesn't comply with the wording of the claims in the language of proceedings, the protection conferred by the European patent application can only be claimed in the scope which is obvious from its translation to the Czech language.

(6) If the applicant files with the Office the corrected translation of patent claims to the Czech language, the corrected translation shall have effect instead of the original translation since the day of the mention of its publication in the Bulletin; the applicant shall pay the administrative fee for the publication according to special regulation. ⁴⁾ The rights of the third persons, which in good faith have used or have made serious and effective preparations for using the subject-matter of the European patent application which according to the translation presented by the applicant was not covered by its scope, are not affected by the delivery of the new translation.

§ 35 b

Conversion of the European patent application into a national application

(1) The Office shall, at the request of the applicant of the European patent application, filed according to the Article 136 Section 2 of the European Patent Convention, start the procedure with the application as with respect to the national application.

(2) If the Office receives the request pursuant the Section 1, it shall invite the applicant to submit, the Czech translation of the European patent application in three copies within a period of three months and to pay the filing fee.

(3) If the applicant has met the conditions pursuant in the Section 2 and the Office has received the request for conversion of the European patent application within a period of 20 months from the date of priority, the Office shall accord to the national application the right of priority deriving from the European patent application as filed.

(4) The Office shall, at the request of the applicant of the European patent application filed under subsection (1), proceed the European patent application as the national application of an utility model in accordance with special regulations. The provisions of subsections (2) and (3) shall apply *mutatis mutandis*.

§ 35 c

The effects of European patent

(1) The patent granted by the European Patent Office shall have the same effects, as the patent granted in accordance with § 34, Section 3.

(2) The European patent shall have the effects in the Czech Republic as from the date, when the grant of the European patent was announced in the European Patent Bulletin; the owner of the patent shall be obliged to submit to the Office the translation of the patent specification to the Czech language within 3 months since this date, and to pay the administrative fee for the publication according to special legal regulations. ⁴⁾ In the same time, the patentee shall be obliged to submit to the Office the address in the Czech Republic, where the official notifications concerning his patent are to be sent. The Office shall announce the grant of the European patent in the Bulletin and publish the translation of the European patent specification.

(3) If the translation of the European patent specification to the Czech language is not submitted within the period according to the Section 2, the owner of the European patent may submit it in the additional time limit of 3 months, provided that he will pay the administrative fee according to the special regulation. ⁴⁾

(4) If the translation of the European patent specification to the Czech language is not submitted even within the time limit according to the Section 3, the European patent shall be considered in the Czech Republic as null and void from the outset.

(5) After the announcement of the grant of the European patent in the European Patent Bulletin, the Office shall enter the European patent to the Czech Register of European patents with the data recorded in the European Patent Register,

§ 35 d

The extent of the protection from the European patent

(1) The text of the European patent in the language of the proceedings before the European Patent Office shall be decisive for the determination of the extent of protection conferred by the European patent; nevertheless, if the extent of protection conferred by the translation of the patent specification, submitted to the Office according to § 35c Section 2, is narrower than in the language of proceedings, third parties can refer to this translation.

(2) The owner of a European patent is entitled to submit to the Office the corrected translation of the European patent specification to the Czech language. The corrected translation shall have effects instead of the original translation as from the publication of the corrected translation by the Office; the owner of the European patent shall pay the fee for the publication according to special regulations.

(3) The rights of third persons, which on the territory of the Czech Republic in good faith have used or have realized serious and effective preparations to use the subject-matter, which pursuant to the translation valid in the period before the publication of the

corrected translation by the Office was not covered by the extent of this European patent, are not affected by the delivery of the new translation.

§ 35 e

Prohibition of the simultaneous protection

(1) If the national patent is granted to the invention, to which the European patent has been granted with the same right of priority to the same patentee or his successor in title, the national patent shall cease to have effect to the extent that it is identical with the European patent, from the date, on which the period for filing the notice of opposition to the European patent expires without such notice being filed, or the date of entry into force of the decision, by which the European patent has been maintained in the opposition proceedings.

(2) The national patent shall not have effects under § 11 Section 2 to the extent that it is identical with the European patent, if it was granted after the expiry of the period for filing the notice of opposition to the European patent without such notice being filed, or after the date of entry into force of the decision, by which the European patent has been maintained in the opposition proceedings.

(3) The provisions of Sections 1 and 2 shall not be affected by the revocation of the European patent under § 35f, Section 5.

§ 35 f

Revocation of European patent

(1) If the European Patent Office revokes the European patent or maintains it in the amended form, the decision shall have effects in the Czech Republic.

(2) The Office shall announce in the Bulletin the revocation of the European patent or its maintaining in the amended form according to the Section 1.

(3) If, the European patent is maintained in the amended text in the opposition proceedings by the European Patent Office, its owner shall be obliged to submit to the Office the translation of the amended text of the patent specification to the Czech language and to pay the publication fee within 3 months from the announcement of this amendment in the European Patent Bulletin. In the Bulletin, the Office shall announce the maintaining of the European patent in the amended text and shall publish the translation of the amended text of the patent specification.

(4) If the Czech translation of the amended text of the European patent specification is not submitted by the time limit according to the Section 3, the European patent shall be considered in the Czech Republic as null and void from the outset.

(5) If the time limit laid down by the European Patent Convention for filing the notice of opposition expires without such notice being filed, or if the European patent is not revoked during the opposition proceedings, the European patent can be revoked by the Office according to § 23; the Office shall suspend the revocation procedure with regard to the European patent, if the opposition procedure concerning the same matter is pending before the European Patent Office. If the European patent was not revoked in the opposition procedure, the Office shall upon request continue in the revocation procedure.

(6) In the revocation proceedings, the text of the European patent in the language of the proceedings is authentic.

§ 35 g Maintenance fees

(1) The owner of patent shall be obliged to pay yearly fees for the maintaining the European patent in the Czech Republic (thereinafter “maintenance fees”). The Office stipulates the amount of maintenance fees by decree.

(2) The obligation to pay the maintenance fees shall arise by the announcement of the grant of the European patent in the European Patent Bulletin. The maintenance fees shall be paid to the Office and shall be payable in advance on the anniversary of the date of filing the application. If there is a period shorter than 2 months between the announcement of the grant of the European patent and the date corresponding to the date of filing the application, the owner of the European patent shall be obliged to pay the first maintenance fee within 2 months from the date of announcement. If the maintenance fee is not paid within the prescribed time limit, it can still be validly paid within an additional period of 6 months in the double amount.

(3) The rights of third persons, which after the expiry of the period for payment of the maintenance fee without such fee being paid, in good faith have begun to make a use of the subject-matter of the invention or have realised serious and effective preparations to such use, are not affected by the additional payment of the maintenance fee.

PART IV

Grant of Supplementary Protection Certificates for medicinal products and plant protection products

§ 35 h

(1) The Office shall grant supplementary protection certificates (thereinafter “certificates”) for substances protected on the territory of the Czech Republic by the valid patent, if they are the active substances of the products which prior being placed on the market are subject to the registration according to the special regulations.

(2) The active substance shall mean a chemically manufactured substance or a combination of substances, a micro-organism or a combination of micro-organisms, which

have general or specific therapeutic or preventive effects with regard to human or animal diseases or which may be administered to the human beings or animals in order to disease diagnosis, improvement or arrangement of their health condition or which are destined to the protection of plants or plant products.

(3) The product referred to in Section 1 shall mean any active substance or a combination containing one or more active substances put up in the form for being placed on the market as a medicament or a plant protection product.

§ 35 i

Application for a certificate

Application for a certificate

(1) The application for a certificate shall be filed by the owner of the patent, whose subject-matter is a substance, except for the patent granted according to § 82, or a method for obtaining a substance or a use of a substance as a medicament or as a plant protection product (thereinafter “basic patent”), or his successor in title.

(2) The application for a certificate shall be filed within 6 months from the date on which the decision on the registration of the product is issued according to special regulations; ^{4d}) if the registration is made prior to the grant of the basic patent, the application for a certificate shall be filed within the period of 6 months from the date on which the patent is granted.

(3) The application for a certificate shall contain:

a) a request for the grant of the certificate stating in particular:

1. the name and address of the applicant;
2. the name and address of the representative, if any;
3. the number of the basic patent and the title of the invention;
4. the number and date of the first registration of the product according to special regulations; ^{4d})

b) a copy of the decision on the registration of the product issued according to special regulations, ^{4d}) where the product is identified, including the product data summary, if it is a medicament;

c) chemical, generic or other terminology enabling to identify the substance protected by the basic patent with the registered product.

(4) When filing the application for a certificate, the applicant shall pay the administrative fee according to the special regulations. ⁴)

(5) The Office shall record the filing of the application for a certificate to the Patent Register and publish it in the Bulletin. The publication shall contain the name and address

of the applicant, the number of the basic patent and the title of the invention protected by the patent, the number and the date of the registration, including of the mention of the product, putting on the market of which is authorised by means of this registration.

§ 35 j

Conditions for obtaining a certificate

The Office shall grant a certificate, if the following conditions are met on the date of filing the application under § 35i:

- a) the basic patent is valid on the territory of the Czech Republic;
- b) the product contains the active substance protected by the basic patent and is validly registered as a medicament or a plant protection product according to special regulations;^{4d)}
- c) the certificate has not yet been granted to the substance;
- d) the registration referred to in the letter b) is the first authorisation to place a medicament manufactured en masse in the Czech Republic or the first authorisation to place a plant protection product on the market in the Czech Republic.

§ 35 k

Grant of the certificate

(1) If the application for a certificate meets the conditions laid down in § 35i and the substance, for which the certificate is applied for, meets the conditions laid down in § 35j, the Office shall grant the certificate and record it in the Patent Register. The certificate shall contain:

- a) the name and address of the owner of the certificate;
- b) the number of the basic patent and the title of the invention;
- c) the number and date of the first registration, the authority having issued the decision on the registration, and the mention of the product, placing on the market of which is authorised by means of this registration;
- d) the duration of the certificate.

(2) The Office shall publish the grant of the certificate in the Bulletin. The publication shall contain the data referred to in Section.

(3) If the application for a certificate doesn't meet conditions laid down in § 35j, the Office shall invite the applicant to remedy the deficiencies within a set time limit. If the applicant fails to complete the application within the set time limit, the Office shall terminate the procedure; the applicant shall be notified about this consequence.

(4) If conditions for the grant of the certificate are not met, the application a certificate will shall be rejected.

(5) The Office shall publish the rejection of the application for a certificate and the termination of the procedure of the grant of the certificate in the Bulletin.; the publication shall contain the data specified in § 35i, Section 5.

§ 35 l

Subject-matter and effects of the certificate

(1) Within the limits of the protection conferred by the basic patent, the protection by the certificate shall extend to the chemical substance or a combination of substances, micro-organism or a combination of micro-organisms, which represent the active substance of the registered product, as well as to every use of the subject-matter of the patent as a medicament or plant protection product, which was authorised before the expiry of the certificate.

(2) The certificate shall confer the same rights as conferred by the basic patent; the certificate shall be subject to the same limitations and the same obligations.

§ 35 m

Duration of the certificate

(1) The certificate shall take effect for a period equal to the period, which elapsed between the filing date of the basic patent application and the date of the first registration enabling to place the product on the market in the Czech Republic as a medicament or plant protection product, reduced by 5 years, but at most 5 years from the date, on which the certificate takes effect.

(2) The certificate shall take effect after the expiry of the lawful term of the basic patent.

(3) For maintaining the certificate, the owner shall pay yearly administrative fees according to the special regulations.⁴⁾

(4) The rights of third persons, which after the expiry of the period for payment of the maintenance fee without such fee being paid, in good faith have begun to make a use of the subject-matter of the invention or have realised serious and effective preparations to use this invention, are not affected by the payment of this fee in the additional time limit.

§ 35 n

Lapse of the certificate

(1) The certificate shall lapse

a) by expiry of its duration period in terms of § 35m, Section 1;

b) if its owner surrenders it;

- c) if its owner doesn't pay administrative fees for maintaining the certificate in force;
- d) if the product may no longer be placed on the market following the revocation or expiry of the registration;
- e) by revocation of the certificate according to § 35o

(2) The Office shall record the lapse of the certificate to the Patent Register and announce it in the Bulletin.

§ 35 o

Revocation of the certificate

- (1) The Office shall revoke the certificate, if
- a) the conditions for its grant according to § 35j have not been met;
 - b) the basic patent has lapsed before its duration term;
 - c) the basic patent has been revoked or limited to the extent that the substance, for which the certificate was granted, is no longer protected by the basic patent; it shall apply also in case of the basic patent revocation, which occurred after its lapse.
- (2) The request for revocation of the certificate may also be submitted after the lapse of the basic patent under Section 1, if the applicant proves his legal interest.

PART TWO

INDUSTRIAL DESIGNS

Chapter I

Concept of Industrial Design

§ 36

- (1) An industrial design within the meaning of this Law shall be the appearance of a product that is new and susceptible of industrial application.
- (2) The following shall not constitute industrial designs within the meaning of subsection (1):
- (a) a technical solution or concept;

(b) application of the known appearance of a product to a product of another kind or of the appearance obtained by enlarging or reducing the known appearance of a product;

(c) substitution of the material used for the appearance of a product;

(d) an architectural concept;

(e) the appearance of a product that can only be ascertained if special attention is paid;

(f) the colour, except where used in relation to the shape, contours or ornamentation.

§ 37

The appearance of a product shall be constituted by any two- or three-dimensional get up consisting, in particular, in the shape, contours, ornamentation or in the arrangement of the colours of the product or in a combination of such features.

§ 38 Novelty

An industrial design shall be deemed to be new if it is unknown, prior to the date on which the applicants priority right begins (Sections 48 and 49), in **the Czech Republic** or abroad by any means generally available to the public, particularly if it has not been depicted or described in printed publications or publicly exploited, displayed, orally described or otherwise presented.

§ 39 Industrial Application

An industrial design shall be deemed susceptible of industrial application if it can serve as a model for repeated manufacture.

Chapter II

Registration of Industrial Designs

§ 40

(1) The Office shall register industrial designs in the Industrial Designs Register (Section 69).

(2) The Office shall not register an industrial design if it is contrary to public interest, particularly the principles of humanity and morality.

§ 41

The Office shall not register an industrial design whose subject matter is identical with that of another application for an industrial design filed in **the Czech Republic** that enjoys an earlier priority right.

Application for an Industrial Design

§ 42

The procedure for registration of an industrial design shall begin with the filing of the application with the Office.

§ 43

(1) The right to file an application for an industrial design shall belong to the creator of the design or his successor in title (hereinafter referred to as "the applicant"). When filing the application, the applicant shall be required to pay an administrative fee in accordance with the relevant statutory provisions.¹⁴

(2) The creator of an industrial design shall be the person who has created it by means of his own creative work.

(3) Joint creators shall have a right to the industrial design in proportion to their contribution to its creation.

Industrial Design Belonging to an Enterprise

§ 44

(1) Where a creator has created an industrial design as part of his tasks deriving from an employment relationship, the right to the design shall pass to the employer, unless otherwise laid down by contract. The right of authorship as such shall remain unaffected.

(2) A creator who has created an industrial design within the framework of an employment relationship shall be required to report the fact without delay, in writing, to his employer and to communicate to him the documents required for assessing the industrial design.

(3) If the employer does not file an application for the industrial design within three months as from receipt of notification of creation of the industrial design, the creator may file an application. Both the employer and the creator shall be required to maintain the secrecy of the industrial design with respect to third parties.

(4) Any creator who has created an industrial design under an employment relationship shall be entitled to appropriate remuneration from his employer. In order to assess the amount of remuneration, the benefit obtained from possible working or other use of the industrial design, together with the material contribution by the employer to the creation of the design and the extent of the creator's service obligations shall be taken into consideration. Where remuneration that has already been paid is obviously no longer proportionate to the benefit obtained from working or other subsequent use of the industrial design, the creator shall be entitled to additional remuneration.

§ 45

Termination of the employment relationship between the creator and the employer shall not prejudice the rights and obligations deriving from the provisions of Section 44.

§ 46

The name of the creator shall be mentioned in the application for an industrial design.

§ 47

An application for an industrial design may relate to a single feature of the appearance of the product or to a number of features of the appearance of products of the same kind that are similar or are intended for joint use (cumulative application for an industrial design).

Right of Priority

§ 48

(1) The priority right of the applicant shall begin with the filing of the application for an industrial design.

(2) The priority right under the international treaty¹⁵ must already be claimed by the applicant in his application for an industrial design the applicant must furnish evidence of his right within three months as from filing of the application, failing which his right shall not be taken into consideration.

§ 49

The Office may recognize the priority right for articles displayed at an exhibition held on the territory of **the Czech Republic** as from the moment of introduction of such articles into the exhibition, on condition that an application for an industrial design in respect of the displayed article is filed with the Office within three months as from the close of the exhibition.

Procedure for an Application for an Industrial Design

§ 50

Where legal proceedings in respect of the right to file an application for an industrial design have been instituted before a competent organ, the Office shall continue the procedure with respect to the application, but shall not give its decision until the competent organ has taken its decision.

§ 51

(1) The Office shall examine the application for an industrial design and the industrial design that is the subject matter of the application.

(2) If the application for an industrial design does not satisfy the conditions stipulated, the Office shall invite the applicant to remedy any defects. If the applicant does not remedy the defects within the stipulated time limit, the Office shall terminate the procedure concerning the application. The attention of the applicant shall be drawn to such consequence of failure to comply when the time limit is stipulated.

(3) The Office may invite the applicant to prove that the industrial design is susceptible of industrial application by producing the subject matter of the application failing such proof, the industrial design shall be deemed not to be susceptible of industrial application.

§ 52

(1) If the subject matter of the application satisfies the conditions for registration in the Industrial Designs Register, the Office shall register the design in the Register and the applicant shall thereupon become the owner of the industrial design. The Office shall issue to the owner an industrial design certificate in which the name of the creator shall be mentioned.

(2) The Office shall publish a notice of the registration of an industrial design in the Official Bulletin. At the request of the owner of the industrial design, the Office shall postpone publication of the registration the person making the request shall be required to pay an administrative fee in accordance with the relevant statutory provisions.¹⁶

(3) If the conditions for registering an industrial design have not been met, the Office shall reject the application. The applicant shall be given the possibility of submitting observations on the documents on the basis of which the decision on the application is to be taken, before rejection.

§ 53

(1) The Office shall transfer the industrial design certificate to the person who is the creator of the industrial design in accordance with the decision taken by the court.

(2) If the organ competent to hear a dispute with regard to the right to file an application for an industrial design decides that the right belongs to another person, the Office shall replace the name of the owner of the industrial design with the name of such other person.

§ 54

(1) The term of an industrial design registration shall be five years as from the filing date of the application.

(2) The term of an industrial design registration shall be extended by the Office for a maximum of two five-year periods.

(3) Extension of the term of an industrial design registration may only be requested by the owner during the final year of the current term.

Chapter III

Effect of Industrial Design Registration

§ 55

The owner of an industrial design shall have the exclusive right to work the design, to authorize others to work it or to assign it to others.

§ 56

The person working an industrial design shall mean the person who manufactures a product using the industrial design as a model or who imports or places such product on the market in the framework of his economic activity.

§ 57

(1) The authorization to work an industrial design protected by a certificate (licence) shall be given by licence contract.

(2) The licence contract shall have effect in respect of third parties as from its entry in the Industrial Designs Register.

§ 58

Assignment of an industrial design shall be effected by written contract that shall take effect in respect of third parties as from its entry in the Industrial Designs Register.

§ 59

Joint Ownership of Industrial Design

(1) Where the rights deriving from one industrial design belong to more than one person (hereinafter referred to as "the joint owners"), the relationship between such persons shall be governed by the general rules of law on shares in joint ownership.¹⁷

(2) Unless otherwise agreed by the joint owners, each of them shall have the right to work the industrial design.

(3) Unless otherwise agreed, the conclusion of a licence contract shall require, in order to be valid, the consent of all joint owners each of the joint owners may independently take action against infringement of the rights deriving from the industrial design.

(4) Assignment of the industrial design shall require the consent of all joint owners. Failing the consent of the other joint owners, each joint owner may only assign his share to another joint owner assignment to a third party may only be effected if none of the joint owners has accepted a written offer of assignment within a period of one month.

§ 60

Limitation of Effect of Industrial Design

(1) The registration of an industrial design shall not have effect against a person (hereinafter referred to as "the prior user") who has already worked the design independently of the creator or owner or who has made preparation therefor, that he can prove, before the priority right arose.

(2) The prior user may request the owner of the industrial design to recognize his right as a prior user.

§ 61

Lapse of Industrial Design

The right in an industrial design shall lapse:

(a) on expiry of the term of validity of its registration;

(b) on relinquishment by the owner of the industrial design in such case, the right shall terminate as from the date on which the Office receives a written declaration by the owner of the industrial design.

§ 62

Cancellation of Industrial Design

- (1) The Office shall cancel an industrial design if it ascertains, after registration, that the conditions for registering an industrial design laid down by this Law were not met.
- (2) The Office may cancel an industrial design on its own initiative or on request.
- 3) Cancellation of an industrial design shall have retroactive effect to the date on which the registration of the design took effect.
- (4) A request for cancellation of an industrial design may be filed even after lapse of the term of validity of its registration if the person filing the request can prove a legal interest.

PART THREE

COMMON PROVISIONS ON PROCEDURE BEFORE THE OFFICE

§ 63

Administrative Procedure

- (1) The general statutory rules on administrative procedure shall apply to procedure before the Office, subject to the exceptions laid down by this Law and excluding the provisions on suspension of procedure, declarations of honour, time limits for decisions and measures in the event of failure to act.¹⁸ **The proceedings before the Office shall be in the Czech language.**
- (2) The Office shall levy administrative fees ¹⁹ for acts carried out in connection with the procedure laid down by this Law. The person requesting the procedure under Sections 23, **35f, 35o**, 62 and 68 (1) and (2) shall be required to deposit a security for the cost of the procedure such security shall be refunded to the person filing the request if the request is substantiated by the procedure. **Security shall amount to 2500 CZK.**

§ 64

Termination of Procedure

- (1) If one of the parties to a procedure does not comply with an invitation by the Office within the stipulated time limit, the Office may terminate the procedure.
- (2) The Office may also terminate the procedure at the request of one of the parties a request for termination of the procedure may not be withdrawn.

§ 65

Excusing Failure to Comply with a Time Limit

(1) The Office may excuse failure to comply with a time limit on legitimate grounds if a party to the procedure so requests within two months of the day on which the reason for failure to comply has ceased to exist, provided that the omitted act has been performed within that period and that the administrative fee in accordance with the relevant statutory provisions has been paid.

(2) Failure to comply with a time limit may not be excused after expiry of a period of one year as from expiry of the period within which the act should have been performed, failure to comply with a time limit for claiming and proving a priority right or for filing a request for full examination of an application for an invention or a request for continuation of the procedure under § 28(3) may likewise not be excused.

(3) Rights acquired by third parties between the date of expiry of the time limit that has not been complied with and the date on which the failure to comply was excused shall not be affected.

§ 66

Inspection of Files

The Office may allow third parties to inspect the files, provided that they prove a legal interest therein. Prior to publication of an invention application or prior to publication of the notice of registration of an industrial design, only the name of the inventor or the creator of an industrial design, the name of the person filing an invention application or an application for an industrial design, the particulars relating to the priority right, the title of an invention application or of an application for an industrial design and the data serving to identify the application may be communicated to third parties.

§ 67

Procedure for declaratory judgement

(1) At the request of the court, state institution or any person proving a legal interest, the Office shall determine whether the production process, the given products, their exploitation or their putting on the market fall within the scope of the patent or it shall determine whether the given products fall within the scope of the industrial design.

(2) **deleted.**

§ 68

Appeals Procedure

(1) Decisions taken by the Office (**deleted text**) may be appealed from within one month of service of their notification.

(2) Decisions on appeal shall be taken by the President of the Office on a proposal by an expert commission established by the President.

(3) **deleted**

§ 69

Patent Register, Industrial Designs Register and Official Bulletin of the Office

(1) The Office shall keep a Patent Register and an Industrial Designs Register for the purpose of entering the particulars of decisive importance relevant to applications for inventions, applications for industrial designs, the procedure relating to such applications and the relevant particulars of decisive importance concerning granted patents and registered industrial designs.

(2) **The Office shall keep the Register of European patents valid on the territory of the Czech Republic. Provisions of paragraph 1 shall apply to entries in the Register of European Patents.**

(3) The Office shall publish an Official Bulletin which shall contain, *inter alia*, all particulars concerning published applications for inventions, granted patents, registered industrial designs and other particulars relating to inventions and industrial designs, as also official notices and leading decisions.

§ 70

Representation

Persons not having the domicile of headquarters on the territory of the Czech Republic, shall be represented in the proceedings before the Office by a representative according to the special regulations.⁷⁾ This shall apply also for filing of translations in terms of the Chapter three.

§ 71

Secret Inventions and Industrial Designs

This Act shall apply also to the procedures on inventions, which are kept secret in terms of the special regulations ^{4a)} or international agreement, by which the Czech Republic is bound, except publication thereof.”.

PART FOUR RATIONALIZATION PROPOSALS

§ 72

(1) A rationalization proposal shall be any technical improvement of a manufacturing or operational nature and any solution to a problem of safety, protection of health at work or protection of the environment the rationalizator shall have the right to dispose of his proposal.

(2) No right may derive from a rationalization proposal if rights deriving from a patent or a registered industrial design constitute an obstacle thereto.

§ 73

(1) A rationalizator shall offer to his employer his rationalization proposal if it falls within the scope of his employer's work or activities.

(2) The rationalizator shall have the right to dispose unrestrictedly of his rationalization proposal if his employer does not conclude an agreement for the acceptance of the offer of the rationalization proposal and the corresponding remuneration within two months as from receipt of the offer (Section 74).

§ 74

The right to exploit a rationalization proposal shall begin on conclusion of the agreement of acceptance of the offer of the rationalization proposal and the corresponding remuneration between the employer and the rationalizator.

PART FIVE

COMMON, TRANSITIONAL AND FINAL PROVISIONS

§ 75

Infringement of Rights

(1) Any person suffering a prejudice due to infringement of rights protected under this Law may, in particular, request prohibition of the infringement of his rights and suppression of the unlawful consequences thereof. If damages have been incurred through the infringement, the injured party shall be entitled to claim indemnification the indemnification shall consist in the loss of value suffered by the injured party's property by reason of the prejudice (actual prejudice) and of the profits that the injured party would have obtained but for the prejudice (loss of profit). If the infringement causes an immaterial prejudice, the injured party shall be entitled to appropriate compensation which may, depending on the circumstances, consist of a monetary indemnity.

(2) The damaged party may request that the court order to the jeopardiser or infringer of the rights to destroy products, the production or placing on the market of which has jeopardised or infringed the right protected by this Act, or to destroy the material and implements having been intended or used exclusively or predominantly in activities, jeopardising or infringing rights protected by this Act. The court shall not order the destruction, if the products in question are not property of the person, against which the proposal is directed or if the jeopardy or infringement of the right could be removed otherwise and the destruction wouldn't be in proportionality with the jeopardy or infringement.

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(3) Disputes arising from legal relationships with respect to inventions, industrial designs and rationalization proposals shall be heard and decided by the courts or by economic arbitration boards, as appropriate except where this Law affords jurisdiction to the Office.

§75a **Right of information**

The holder of the right protected by this Act shall have towards everybody, who jeopardises or infringes his rights, the right to be informed about the source of the product including information concerning placing of products on the market; the court shall not grant the right of information, if there is no proportionality in relation to the severity of the threat or infringement.

§ 75b

(1) If a preliminary measure is requested in proceedings concerning the infringement of right to the invention or industrial design, the court can order the plaintiff to provide a security, sufficient to indemnify the defendant and to prevent the misuse of the protection granted to the owner of patent or industrial design.

(2) The court, which is competent to order a preliminary measure either

- a) orders the plaintiff to provide the security under the Section within 7 days as from the filing date of the request and decides upon the request for the preliminary measure within 7 days from the date on which the court finds that the plaintiff has provided the security, or
- b) decides on the request for the preliminary measure within 7 days at the latest from the filing date of the request.

§ 76 **Relations with Foreign Countries**

(1) Persons having their domicile of headquarters on the territory of the state, which is party to the Paris Convention ³⁾ or a member of the World Trade Organisation, ^{4b)} shall enjoy the equal rights as nationals of the Czech Republic.”.

(2) The provisions of international treaties by which **the Czech Republic** is bound shall not be affected by this Law.

Transitional Provisions

§ 77

Procedures in respect of applications for discoveries that have not been completed on entry into force of this Law shall be completed in accordance with prior law.

§ 78

(1) Applications for inventions for which no decision has been taken prior to entry into force of this Law shall be processed in accordance with the provisions of this Law, whereby the Office shall carry out a full examination *ex officio*.

(2) In the case of inventions governed by the provisions of Section 28 (a) of Law No. 84/1972 of the Collection, the right to the patent shall belong to the employer if he files an application for a patent within three months as from entry into force of his Law. The inventor shall be entitled to appropriate remuneration from the employer under Section 9 (4) of this Law. If the employer does not apply for grant of a patent within that period, the right to the patent shall be deemed to belong to the employee.

(3) The rights of third parties shall not be affected in the event of working of the subject matter of an invention application under subsections (1) and (2), prior to the entry into force of this Law, in accordance with the provisions of prior law. The inventor's right to receive remuneration for working, in accordance with such provisions, the subject matter of an application for invention requesting the issue of an inventor's certificate under prior law shall not be affected.

§ 79

The Office shall grant a patent on a request for recognition of an inventor's certificate filed in accordance with an international treaty,²⁴ prior to entry into force of this Law, provided that the applicant makes the application for recognition of an inventor's certificate comply with the conditions for granting a patent within six months as from entry into force of this Law. If the applicant fails to do so, the Office shall terminate the procedure.

§ 80

- (1) Applications for industrial designs on which no decision has been taken prior to entry into force of this Law shall be processed in compliance with the provisions of this Law.
- (2) The employer of a creator of an industrial design, for which an application has been filed, created under the provisions of Law No. 84/1972 of the Collection, shall be entitled to file the application if he submits a request to be entered as the applicant within three months of the entry into force of this Law. The creator shall be entitled to receive from the employer remuneration in accordance with Section 44 (4) of this Law. If the employer does not submit a request to be entered as the applicant within that period, the registration of the industrial design shall be deemed to have been applied for by the creator of the industrial design.
- (3) The rights of third parties to exploit the subject matter of applications for industrial designs referred to in subsections (1) and (2) that began prior to entry into force of this Law under the provisions of prior law shall not be affected. The right of the creator to receive remuneration for exploitation under the provisions of prior law shall not be affected.

§ 81

- (1) An inventor's certificate issued under Law No. 84/1972 of the Collection shall terminate on expiry of the fifteenth year as from the filing date of the application. However, its term of validity shall not terminate earlier than one year after the entry into force of this Law. Maintenance of the validity of the inventor's certificate after the expiry of one year as from the entry into force of this Law shall be subject to payment of an administrative fee in accordance with the relevant statutory provisions.²⁵
- (2) An industrial design certificate issued under Law No. 84/1972 of the Collection shall terminate on expiry of the fifth year as from the filing date of the application on request, the Office shall extend the term of validity of the industrial design certificate for a further five-year period. However, the term of validity of the certificate shall not terminate earlier than one year after the entry into force of this Law. Submission of the request shall be subject to payment of an administrative fee in accordance with the relevant statutory provisions.²⁶
- (3) An organization which possesses or has obtained, under prior law, the right to use an invention or industrial design shall have the same rights as the owner of a patent or of an industrial design.

(4) Any person who has made, in circumstances other than those laid down in Section 28 (a) of Law No. 84/1972 of the Collection, an invention that is protected by an inventor's certificate granted under prior law and of which the right to dispose belongs to an organization or has been obtained by an organization, but which has not been worked by that organization, shall have the right to request the Office, at any time during the term of validity of the inventor's certificate, to transform the inventor's certificate into a patent. Transformation of an inventor's certificate into a patent shall be subject to payment of an administrative fee. This provision shall be set out in more detail in the Regulations.

(5) The inventor or the creator of an industrial design shall have the right to exploit the right in the invention or in the industrial design, as appropriate, within the framework of his enterprise, if the invention protected by an inventor's certificate has not been made in accordance with the provisions of Section 28 (a) of Law No. 84/1972 of the Collection or if the industrial design protected by an inventor's certificate has not been created under the provisions of Section 82 of that Law.²⁷

(6) If an organization having the rights referred to in subsection (3) does not pay the administrative fee for maintaining the inventor's certificate in accordance with the relevant statutory provisions²⁸ or does not submit a request for entry in the Industrial Designs Register within six months of expiry of the period laid down in subsection (1), the right shall revert to the owner of the patent or industrial design provided he performs those acts within an additional period of six months. Failure to comply with this time limit may not be excused.

§ 82

(1) At the request of the owner of a patent granted abroad and of which subject matter falls under Section 28 (b) and (c) of Law No. 84/1972 of the Collection, the Office may grant a priority right in accordance with the international treaty²⁹ for an invention application filed in **the Czech Republic** after expiry of the time limit laid down in that treaty.

(2) The request referred to in subsection (1) must be submitted when the application for the invention is filed and a document certifying grant of a patent abroad must be furnished within 12 months of entry into force of this Law.

(3) The Office shall not grant a patent on an invention application filed under subsection (2) if

(a) the applicant has not submitted a document certifying the authorization given in any country for the sale or manufacture of the subject matter of the patent;

(b) if the applicant has not submitted a document certifying authorization to sell or manufacture the subject matter of the patent in **the Czech Republic** given by the competent body of **the Czech Republic** on a request submitted within six months of grant of the authorization for sale or manufacture of the subject matter of the patent in any country;

(c) the subject matter of the patent granted abroad has been placed on the market in **the Czech Republic** prior to filing of the application in accordance with subsections (1) and (2).

4) After submitting a request under subsections (1) and (2), the owner of a patent issued abroad must produce the documents referred to in subsection (3) (a) and (b) within three months as from their issue and, at the latest, before expiry of the term of validity of the patent in accordance with subsection (5).

(5) The term of validity of a patent granted as a result of an application submitted in accordance with subsection (2) shall be 16 years as from the priority date afforded to it.

(6) Failure to comply with the time limits set out in subsections (2), (3) (a) and (b) and (4) may not be excused.

§ 83

Prior law shall apply to legal relationships deriving from patents for inventions and patents for industrial designs granted before the entry into force of this Law.

§ 84

The working of an invention protected by an inventor's certificate or an industrial design protected by a certificate under prior law which began before entry into force of this Law or working which was authorized on a contractual basis before entry into force of this Law shall not constitute an infringement of the rights of the owner of the patent. The right of the inventor to remuneration for such working shall not be affected.

§ 85

(1) The processing of applications for rationalization proposals not terminated before the entry into force of this Law shall be completed in accordance with this Law, it being understood that the time limit laid down in Section 73 (2) shall begin to run on the date of entry into force of this Law.

(2) Prior law shall be applicable to legal relationships deriving from rationalization proposals on which a favorable decision has been given before entry into force of this Law, it being understood that the term of validity of a rationalization certificate shall be three years as from the entry into force of this Law.

§ 86

(1) Claims to remuneration for a discovery or for working an invention, an industrial design or a rationalization proposal, claims for reimbursement of the appropriate cost of preparing drawings, models or prototypes, for the spirit of initiative in participation in the execution, trials and implementation of discoveries, inventions, industrial designs or rationalization proposals, as also claims to remuneration for drawing attention to the possibility of using an invention or rationalization proposal, that originated before the entry into force of this Law shall be governed by prior law.

(2) Where an invention, protected by an inventor's certificate and for which an organization has obtained in accordance with Section 81 (3) of this Law the rights of the owner of a patent, is worked after the entry into force of this Law, the organization shall pay to the inventor remuneration in accordance with Section 9 (4) of this Law. Where an industrial design, protected by a certificate and for which an organization has obtained in accordance with Section 81 (3) of this Law the rights of an industrial design certificate holder, is worked after the entry into force of this Law, the organization shall pay to the holder of the industrial design remuneration in accordance with Section 44 (4) of this Law.

(3) Claims to remuneration for working a rationalization proposal for which a rationalizer's certificate has been issued and that originated before the entry into force of this Law shall be governed by prior law.

§ 87

Thematic tasks announced before the entry into force of this Law shall be governed and treated in accordance with prior law.

Empowering, Repealing and Final Provisions

§ 88

(1) The Office shall set out in detail, by Decree, the procedure in matters of inventions and industrial designs. **The Office shall set out by a Decree the amount of the maintenance fees.**

(2) **Deleted.**

(3) **Deleted.**

§ 89

The following instruments are hereby repealed:

1. Law No. 84/1972 of the Collection on discoveries, inventions, rationalization proposals and industrial designs;
2. Decree No. 104/1972 of the Collection on the procedure relating to discoveries, inventions and industrial designs;
3. Decree No. 105/1972 of the Collection on rationalization proposals;
4. Decree No. 107/1972 of the Collection on relations with foreign countries in matters concerning foreign inventions and industrial designs;
5. Decree No. 93/1972 of the Collection on the conciliation procedure in disputes concerning remuneration for inventions, rationalization proposals and industrial designs;
6. Decree No. 27/1986 of the Collection on remuneration for discoveries, inventions, rationalization proposals and industrial designs;
7. Decree No. 28/1986 of the Collection on the administration of inventions, rationalization proposals and industrial designs and on their planned utilization in the national economy;
8. Decree No. 29/1986 of the Collection on the planning of thematic tasks;
9. Decree No. 68/1974 of the Collection determining exceptions to the provisions of Law No. 84/1972 of the Collection on discoveries, inventions, rationalization proposals and industrial designs.

§ 90

This Law shall enter into force on January 1, 1991.

The provisions of § 24, Section 3, 4, § 35a to 35g shall enter into force on 1st July 2002.

1. Convention on International Exhibitions done at Paris
on November 22, 1928 (No. 46/1932 of the Collection)

2. Code of Civil Law (Law No. 40/1964 of the Collection)
in its current wording.

Code of the Economy (Law No. 109/1964 of the Collection)
in its current wording.

3 Decree of the Minister for Foreign Affairs of the Czechoslovak Socialist Republic regarding the Paris Convention for the Protection of Industrial Property of March 20, 1883, revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967 (No. 64/1975 of the Collection).

4 Law on Administrative Fees (No. 105/1951 of the Collection)
in the wording of the Decree of the Presidium of the National Assembly (No. 138/1960 of the Collection).

Decree of the Federal Ministry of Finance, the Ministry of Finance, Prices and Wages of the Czech Republic and of the Ministry of Finance, Prices and Wages of the Slovak Republic (No. 570/1990 of the Collection).

5 See footnote 4, *supra*.

6 *Ibid*.

7 See footnote 3, *supra*.

8 See footnote 4, *supra*.

9 *Ibid*.

10 *Ibid*.

11 *Ibid*.

12 *Ibid*.

13 *Ibid*.

14 *Ibid*.

15 See footnote 3, *supra*.

16 See footnote 4, *supra*.

17 See footnote 2, *supra*.

18 Sections 29, 39, 49 and 50 of the Law on Administrative Procedure (Administrative Regulations) (No. 71/1967 of the Collection).

19 See footnote 4, *supra*.

20 *Ibid*.

21 Section 244 of the Code of Civil Procedure

22 Law of the Czech National Council on the profession of lawyer (No. 128/1990 of the Collection).

Law of the Slovak National Council on commercial lawyers and legal assistance offered by them (No. 132/1990 of the Collection).

23 Law on the Protection of State Secrecy (No. 102/1971 of the Collection) in the wording of Law No. 383/1990 of the Collection.

24 Decree of the Minister for Foreign Affairs of the Czechoslovak Socialist Republic on the Agreement on the Mutual Recognition of Inventors Certificates and Other Titles of Protection for Inventions (No. 133/1978 of the Collection) (for the text of the Agreement, see Industrial Property Laws and Treaties, MULTILATERAL TREATIES - Text 2-002).

25 See footnote 4, *supra*.

26 *Ibid*.

27 Code of the Economy (Law No. 109/1964 of the Collection) in its current wording.

Law on Citizens' Private Enterprise (No. 105/1990 of the Collection).

28 See footnote 4, *supra*.

29 See footnote 3, *supra*.