

## **PATENTS ACT.**

• Chapter 1. General Provisions .....	1
• Chapter 2. The Processing of Patent Application and the Opposition Procedure .....	5
• Chapter 3. International Patent Application .....	11
• Chapter 4. The Scope and Term of a Patent .....	13
• Chapter 5. Renewal fees .....	14
• Chapter 6. Assignment, Licences and Compulsory licences .....	14
• Chapter 7. Termination of the Patent .....	16
• Chapter 8. Obligation to Provide Information .....	17
• Chapter 9. Liability, Obligation to Pay Compensation and Court Proceedings .....	18
• Chapter 9 a. Supplementary Protection Certificates .....	21
• Chapter 9 b. European Patent and Application for European Patent .....	22
• Chapter 10. Special Provisions .....	25

*The Finnish patents act and patents decree have been amended in July 15, 2000 mainly due to the Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions. Some other minor amendments were also made.*

(Unofficial translation)

PATENTS ACT Nº. 550 of December 15, 1967, as amended by Acts No. 575/71 of 2 July 1971, No. 407/80 of 6 June 1980, No. 387/85 of 10 May 1985 , No. 801/91 of 10 May 1991, No. 577/92 of 26 June 1992, No. 1034/92 of 13 November 1992, No. 1409/92 of 18 December 1992, No. 593/94 of 28 June 1994, No. 717/95 of 21 April 1995, No. 1695/95 of 22 December 1995, No. 243/97 of 21 March 1997, and No. 650/00 of 30 June 2000

### **Chapter 1. General Provisions ➔**

Section 1 (30.6.2000/650) Anyone who has made an invention which is susceptible of industrial application, or his successor in title, shall be entitled, on application, to a patent and thereby to the exclusive right to exploit the invention commercially, in accordance with this Act.

The following, as such, shall not be regarded as inventions:

- (1) discoveries, scientific theories and mathematical methods;
- (2) aesthetic creations:
- (3) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;

(4) presentations of information.

Methods for surgical or therapeutic treatment or diagnostic methods, practiced on humans or animals, shall not be regarded as inventions. This provision shall not, however, preclude the grant of patents for products, including substances and compositions, for use in any of these methods.

Patents shall not be granted for plant or animal varieties. Inventions which concern plants or animals shall nevertheless be patentable if the technical feasibility of the invention is not confined to a particular plant or animal variety. The concept of plant variety within the meaning of this Act is defined by Article 5 of Council Regulation (EC) No 2100/94 on Community plant variety rights.

Patents shall not be granted for essentially biological processes for the production of plants or animals. For the purposes of this Act a process for the production of plants or animals shall be considered essentially biological if it consists entirely of natural phenomena such as crossing or selection. What is said above shall be without prejudice to the patentability of inventions which concern a microbiological or other technical process or a product obtained by means of such a process. For the purposes of this Act 'microbiological process' means any process involving or performed upon or resulting in microbiological material.

Inventions shall be patentable even if they concern a product consisting of or containing biological material or a process by means of which biological material is produced, processed or used. Biological material which is isolated from its natural environment or produced by means of a technical process may be the subject of an invention even if it previously occurred in nature. For the purposes of this Act 'biological material' means any material containing genetic information and capable of reproducing itself or being reproduced in a biological system.

Section 1 a (30.6.2000/650) The human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene, cannot constitute patentable inventions.

An element isolated from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, may, without prejudice to the provisions of paragraph 1, where the requirements for patentability are fulfilled, constitute a patentable invention, even if the structure of that element is identical to that of a natural element.

Section 1 b (30.6.2000/650) Patents shall not be granted for inventions the commercial exploitation of which would be contrary to ordre public or morality.

The commercial exploitation of an invention may not be considered to be contrary to ordre public or morality merely because it is prohibited by law or regulation.

For the purposes of paragraph 1 the following inventions, in particular, shall be considered unpatentable:

- 1) processes for cloning human beings;
- 2) processes for modifying the germ line genetic identity of human beings;
- 3) uses of human embryos for industrial or commercial purposes;

4) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes.

Section 2 (6.6.1980/407) Patents may only be granted for inventions which are new in relation to what was known before the filing date of the patent application and which also differ essentially therefrom.

Everything made available to the public in writing, in lectures, by public use or otherwise shall be considered as known. Also, the contents of a patent application filed in this country before said filing date shall be considered as known if that application becomes available to the public pursuant to Section 22. Likewise, the contents of a utility model application filed in this country before the filing date of the patent application shall be deemed to have become known if said application becomes available to the public pursuant to Section 18 of the Utility Model Right Act. The condition in the first paragraph that the invention must differ essentially from what was known before the filing date of the patent application, does not, however, apply in respect of the contents of such patent or utility model applications. (10.5.1991/801)

Applications referred to in Chapter 3 shall, for the purposes of the second paragraph, in certain cases have the same effect as patent applications filed in this country, pursuant to provisions laid down in Sections 29 and 38.

The provision in the first paragraph, requiring that an invention be new, shall not preclude the grant of patents for known substances or compositions for use in a method referred to in the third paragraph of Section I, provided that the use of the substance or composition is not known for such method.

Patents may be granted, however, for inventions made available to the public within the six months preceding the filing date of the application if disclosure was the result of:

- (1) an evident abuse in relation to the applicant or his predecessor in title; or
- (2) the fact that the applicant or his predecessor in title had displayed the invention at an official, or officially recognized, international exhibition falling within the terms of the Convention on International Exhibitions signed at Paris on November 22, 1928 (Finnish Treaty Series 36/37).

Section 3 (6.6.1980/407) The exclusive right conferred by a patent shall imply, with the exceptions stated below, that no one may exploit an invention, without the proprietor's consent, by:

- (1) making, offering, putting on the market or using a product protected by the patent, or importing or possessing such product for these purposes;
- (2) using a process protected by the patent or offering such process for use in this country if he knows or if it is evident from the circumstances that the use of the process is prohibited without the consent of the proprietor of the patent;
- (3) offering, putting on the market or using a product obtained by a process protected by the patent or importing or possessing such product for these purposes.

A patent shall also confer on its proprietor the exclusive right to prevent any person not

having his consent from supplying or offering to supply any person not entitled to exploit the invention with the means of working the invention in this country in relation to an essential element of the invention where such other person knows, or where it is evident from the circumstances, that the means are suitable and intended for working the invention. This provision shall not apply where the means are staple commercial products, except where such other person attempts to induce the receiver to commit any of the acts referred to in the first paragraph of this Section. For the purposes of this paragraph, any person using the invention in a manner referred to in the third paragraph, item (1), (2) or (4), shall not be regarded as entitled to exploit the invention.

The exclusive right shall not apply to:

- (1) use which is not commercial;
- (2) use of a patented product that has been put on the market within the European Economic Area by the proprietor of the patent or with his consent; (18.12.1992/1409)
- (3) use in experiments relating to the invention as such;
- (4) preparation in a pharmacy of a medicine prescribed by a physician in individual cases or treatment given with the aid of a medicine so prepared.

Section 3 a (30.6.2000/650) The protection conferred by a patent on a biological material possessing specific characteristics as a result of the invention shall extend to any biological material derived from that biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.

The protection conferred by a patent on a process that enables a biological material to be produced possessing specific characteristics as a result of the invention shall extend to biological material directly obtained through that process and to any other biological material derived from the directly obtained biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.

The protection conferred by a patent on a product containing or consisting of genetic information shall extend to all material, save as provided in paragraph 1 of Section 1 a, in which the product is incorporated and in which the genetic information is contained and performs its function.

The protection referred to above shall not extend to biological material obtained from the propagation or multiplication of biological material placed on the market in the territory of the European Economic Area by the holder of the patent or with his consent, where the multiplication or propagation necessarily results from the application for which the biological material was marketed, provided that the material obtained is not subsequently used for other propagation or multiplication.

Section 3 b (30.6.2000/650) By way of derogation from the provisions of Section 3 a, paragraphs 1 to 3, the sale or other form of commercialisation of plant propagating material to a farmer by the holder of the patent or with his consent for agricultural use implies authorisation for the farmer to use the product of his harvest for propagation or multiplication by him on his own farm, the extent and conditions of this derogation corresponding to those under Article 14 of Council Regulation (EC) No 2100/94 on Community plant variety rights.

By way of derogation from the provisions of Section 3 a, paragraphs 1 to 3, the sale or any

other form of commercialisation of breeding stock or other animal reproductive material to a farmer by the holder of the patent or with his consent implies authorisation for the farmer to use the protected livestock for an agricultural purpose. This includes making the animal or animal reproductive material available for the purposes of pursuing his agricultural activity but not sale within the framework or for the purpose of a commercial reproduction activity.

More specific regulations concerning the contents and implementation of the derogation provided for in paragraph 2 may be decreed by the Government where necessary.

Section 4 Any person who, at the time the patent application was filed, was commercially exploiting the invention in this country may continue to do so, notwithstanding the grant of a patent, provided that the general nature of such previous exploitation is maintained and that the exploitation does not constitute an evident abuse in relation to the applicant or his predecessor in title. Such right of exploitation shall also be afforded, subject to the same conditions, to any person who has made substantial preparations for commercial exploitation of the invention in this country.

The right afforded under the first paragraph above can only be transferred to other parties together with the business in which it originated or in which exploitation was intended to take place.

Section 5 Notwithstanding the patent, an invention may be exploited on foreign vessels, aircraft or other means of transport for their own needs when temporarily entering Finland in regular traffic or otherwise.

The Government may decree that, notwithstanding the grant of a patent, spare parts and accessories for aircraft may be imported into the country and used here for the repair of aircraft belonging to a foreign State in which corresponding privileges are granted in respect of Finnish aircraft.

Section 6 (6.6.1980/407) A patent application relating to an invention disclosed not earlier than 12 months before the date of filing in an application for a patent or a utility model filed in Finland or in an application for a patent, an inventor's certificate or utility model protection filed in another country party to the Paris Convention for the Protection of Industrial Property (Finnish Treaty Series 36/10 and 43/15) or the Agreement Establishing the World Trade Organization (Finnish Treaty Series 5/95) shall be deemed, for the purposes of the first, second and fourth paragraphs of Section 2 and of Section 4, to have been filed at the same time as the earlier application if the applicant so requests. Such priority may also be enjoyed under an earlier application for protection filed in a country not party to the above agreements if the corresponding priority deriving from a Finnish application is granted in such country and if the laws of such country substantially conform to the above agreements. (22.12.1995/1695)

The Government, or a patent authority appointed by the Government, shall lay down the manner in which priority claims shall be filed and the documents to be submitted in support of claims. Where such requirements are not satisfied, priority shall not be granted.

## **Chapter 2. The Processing of Patent Application and the Opposition Procedure ➔**

(21.3.1997/243)

Section 7 (6.6.1980/407) "Patent Authority" shall mean the Patent Authority of Finland unless otherwise stated. The Patent Authority of Finland is the National Board of Patents and Registration of Finland, pursuant to provisions laid down separately.

Section 8 Applications for patents shall be filed in writing with the Patent Authority or, in the cases referred to in Chapter 3, with the patent authority of another country or with an international organization.

The application shall contain a description of the invention, together with drawings where necessary, and a precise statement of the subject matter for which patent protection is sought (one or more claims). The fact that the invention relates to a chemical compound shall not mean that a specific use must be disclosed in the claim. The description shall be sufficiently clear to enable a person skilled in the art, with the guidance thereof, to carry out the invention. An invention relating to a biological material or involving the use of biological material when being carried out shall be regarded, in the cases referred to in Section 8a, as disclosed with sufficient clarity only if the requirements set out in that Section are also satisfied. (30.6.2000/650)

An application shall also contain an abstract of the description and claims. The abstract shall merely serve for use as technical information and may not be taken into account for any other purpose.

The inventor's name shall be stated in the application. If a patent is applied for by a person other than the inventor, the applicant shall be required to prove his title to the invention.

The description, abstract and claims shall be written in Finnish or Swedish in compliance with the language laws in force. If the abstract and the claims are written in one only of the two national languages, the Patent Authority shall have the abstract and the claims translated into the other national language before the application is made available to the public under the second paragraph of Section 22. The applicant shall pay the prescribed translation fee. Where the applicant is a foreigner, the description shall be written in Finnish and the abstract and the claims in Finnish and Swedish. However, all applicants shall be entitled to write the description, abstract and claims in both languages.

The applicant shall pay the prescribed application fee. The prescribed renewal fee shall also be paid for the application in respect of each year that has begun before a final decision is given on the application. (10.5.1985/387)

A fee year shall be computed the first time from the day when the application was filed or is deemed to have been filed, and thereafter from the corresponding calendar day. (10.5.1985/387)

Section 8 a (30.6.2000/650) Where an invention concerns biological material or the carrying out thereof involves the use of a biological material which neither is available to the public nor can be described in the application documents in such a manner as to enable a person skilled in the art to carry out the invention, a sample of the biological material shall be deposited no later than on the date the application was filed. The biological material shall be continuously on deposit thereafter so that any person entitled under this Act to a sample of the deposited material may have the sample furnished in Finland. The Government shall decree where deposits may be made.

If a deposited biological material ceases to be viable or if samples of the material cannot be furnished for other reasons, it may be replaced by a new deposit of the same biological material, as decreed by the Government. Once this has been done, the new deposit shall

be deemed to have been made on the date of the previous deposit.

Section 9 (6.6.1980/407) If the applicant so requests and pays the prescribed fee, the Patent Authority shall, under conditions laid down by Government decree, arrange for a novelty search by the International Searching Authority under Article 15(5) of the Patent Cooperation Treaty done at Washington on June 19, 1970.

Section 10 A patent may not be applied for in respect of two or more inventions that are independent of one another in the same application.

Section 11 If a patent is applied for in respect of an invention disclosed by the applicant in an earlier application on which no final decision has been given, the later application shall, at the request of the applicant and on the conditions laid down by the Government, be deemed to have been filed at the time the documents disclosing the invention were filed with the Patent Authority.

Section 12 An applicant not domiciled in the country shall be required to appoint a representative residing in the European Economic Area to represent him in matters concerning the application. (30.6.2000/650)

If it has not been possible to notify the applicant at the address he has furnished of a decision taken in respect of a patent application, notification can be effected by publishing an announcement in respect of the matter in the patent gazette published by the National Board of Patents and Registration. Such notification is deemed to have been effected once the action mentioned above has been taken. (21.3.1997/243)

Section 13 (21.3.1997/243) An application for a patent may not be amended in such a way that protection is claimed for matter not disclosed in the application at the time it was filed.

Section 14 Repealed 21.3.1997/243

Section 15 If the applicant fails to satisfy the requirements for the application or if the Patent Authority has other objections to acceptance of the application, the applicant shall be notified thereof by official action and be invited to file his response or to correct the application within the specified period of time. The Patent Authority may, however, make such changes to the abstract as it deems necessary without consulting the applicant. (6.6.1980/407)

If the applicant fails to file observations or take steps to correct the application within the period of time laid down, the application shall be dismissed. The official action shall include a notice to that effect.

A dismissed application may be reinstated if, within four months of the expiration of the time limit, the applicant files observations or takes steps to correct the application and, within the same period of time, pays the prescribed reinstatement fee.

If the applicant fails to pay the renewal fee under Sections 8, 41 and 42, the application shall be dismissed without official notification. Applications dismissed for such reason may not be reinstated. (10.5.1985/387)

Section 16 If, after the applicant has filed his observations, there still remains an obstacle to acceptance of the application which the applicant has had an opportunity to comment on, the application shall be rejected, unless there is reason to issue a further official notification



to the applicant.

Section 17 If a person other than the applicant claims before the Patent Authority that he has proper title to the invention and if the circumstances are held to be uncertain, the Patent Authority may invite such person to institute proceedings before a court of law within a period of time to be laid down, failing which the claim may be disregarded in the further processing of the patent application.

If proceedings for proper title to an invention in respect of which a patent has been applied for are pending before a court, the patent application may be suspended until a final decision is given by the court.

Section 18 If a person proves to the Patent Authority that he and not the applicant has proper title to the invention, the Patent Authority shall, if such person so requests, transfer the application to him. The transferee shall pay a new application fee.

If a request is made for transfer of a patent application, the application shall not be dismissed, rejected or granted until a final decision has been taken on the request.

Section 19 (21.3.1997/243) If the application satisfies the formal requirements and no obstacle is found to acceptance of the application, the patent authority shall notify the applicant that the application can be accepted.

Once the notice referred to in the first paragraph has been given to the applicant, no request may be filed under Section 11, nor may the patent claims be altered in such a way as to extend the scope of protection.

The applicant shall pay the prescribed printing fee within two months from the date on which he was given the notice pursuant to the first paragraph. Failing that, the application shall be dismissed. However, examination may be resumed if, within four months of the expiration of the prescribed time limit, the applicant pays the printing fee together with the prescribed reinstatement fee.

If an application for a patent is filed by an inventor and if, within two months of the date on which he was given the notice pursuant to the first paragraph, he requests exemption from payment of the printing fee, the Patent Authority may grant said exemption if the applicant is considered to have great difficulty in paying the fee. If the request is rejected, a fee paid within two months thereafter shall be deemed to have been paid on time.

Section 20 (21.3.1997/243) Once the applicant has done what is required of him under Section 19, the Patent Authority shall accept the application, provided that there is still no obstacle. The acceptance of the application shall be announced.

A patent has been granted on the day the acceptance of the application is announced. A granted patent shall be recorded in the Patent Register kept by the Patent Authority. Letters patent shall be issued to the proprietor of the patent.

Section 21 (21.3.1997/243) From the date on which the patent is granted, copies of the printed patent specification containing the description, claims and abstract, and giving also the names of the proprietor of the patent and the inventor, shall be obtainable from the Patent Authority.

Section 22 The documents concerning a patent shall be available to the public as from the



date on which the patent was granted. (21.3.1997/243)

Eighteen months after the filing date of the application or, if priority is claimed, the priority date, the documents shall be made available to the public regardless of whether the patent has been granted yet. If the application has been dismissed or rejected, the documents shall be made available to the public only if the applicant requests reinstatement of his application, lodges an appeal or submits a request under Sections 71a or 71 b. (21.3.1997/243)

At the request of the applicant, the documents shall be made available earlier than provided in the first and second paragraphs of this Section.

When documents are made available under the second and third paragraphs of this Section, an announcement to that effect shall be published.

If a document contains a business secret and if such secret does not concern the invention for which a patent is sought or granted, the Patent Authority may, on request and if good reason is given, order that the document shall not be made available. If such request is made, the document shall not be made available until the request has been refused by a final decision. (21.3.1997/243)

Where biological material has been deposited under Section 8a, any person shall have the right to obtain a sample of the biological material once the documents have become available to the public under the first, second or third paragraph. Notwithstanding the above provision samples will not be issued to any person not allowed by law or other applicable regulations to handle the deposited biological material. It shall also not imply that samples may be issued to any person whose handling of the sample can be assumed to involve an obvious risk in view of the harmful properties of the material. (30.6.2000/650)

Notwithstanding the provision in the first sentence of the sixth paragraph, samples of a deposit shall be issued to a special expert only, if the applicant so requests, until a patent has been granted or during a period of 20 years from the filing date of the application if a final decision not resulting in the grant of a patent has been taken on the application. The Government shall lay down the time limits for making such request and determine who may be called as an expert by a person wishing to obtain a sample. (21.3.1997/243)

A person wishing to obtain a sample shall submit a request in writing to the Patent Authority and give an undertaking in the terms laid down by the Government to prevent misuse of the sample. Where samples may be issued to a special expert only, the undertaking must be given by such expert. (10.5.1985/387)

Section 23 (21.3.1997/243) If an application which has been made available to the public is dismissed or rejected, the decision shall be announced once it has become final.

Section 24 (21.3.1997/243) Any person may file an opposition against a granted patent. The opposition must be submitted to the Patent Authority within nine months of the date of the grant of the patent. The opposition must be filed in writing and specify the grounds on which it is made.

Where an opposition to the grant of a patent has been filed, the applicant shall be notified thereof and given an opportunity to make observations on the opposition. A patent proprietor not domiciled in Finland shall appoint a representative referred to in Section 12 of the Patents Act for opposition proceedings.

The Patent Authority may, where special circumstances warrant, take the opposition into account, even if the patent has lapsed or lapses pursuant to Section 51 or is terminated pursuant to Section 54 or even if the opposition is withdrawn. If the person who filed the opposition withdraws it, he may not appeal from a final decision taken by the Patent Authority.

Section 25 (30.6.2000/650) The Patent Authority shall revoke a patent on account of an opposition:

- (1) if the patent relates to an invention that does not satisfy the requirements of Sections 1, 1 a, 1 b or 2;
- (2) if the patent relates to an invention the description of which is not sufficiently clear to enable a person skilled in the art to carry out the invention;
- (3) if the patent contains subject matter not included in the application as filed; or
- (4) if the scope of protection was extended after the notice referred to in Section 19, paragraph 1, was given.

The Patent Authority shall reject the opposition if there is no obstacle referred to in the first paragraph to maintenance of the patent.

If the proprietor of the patent has during opposition proceedings amended the patent in such a manner that there is no obstacle referred to in the first paragraph to maintenance of the patent as amended, the Patent Authority shall maintain the patent in the amended form.

If the patent is maintained as amended, the Patent Authority shall keep the amended patent specification available to the public.

The Patent Authority shall announce a decision taken account of an opposition once the decision has become final.

Section 26 (21.3.1997/243) An applicant may appeal against a final decision taken by the Patent Authority on a patent application if the decision is not in his favor. A patent proprietor or a person who lodged an opposition may appeal against a final decision taken by the Patent Authority on account of an opposition if the decision is not in his favor. Such appeal may be examined, even if the person who lodged the opposition withdraws his appeal, where special circumstances warrant.

A decision rejecting a request for reinstatement under the third paragraph of Section 15 or the third paragraph of Section 19 or a decision granting a request for transfer of an application under Section 18 may be appealed against by the applicant. A decision rejecting a request for transfer of an application may be appealed against by the person who made the request.

A decision rejecting a request for an order under the fifth paragraph of Section 22 may be appealed against by the person who made the request.

Section 27 (21.3.1997/243) Appeals from final decisions by the Patent Authority referred to in Section 26 shall be lodged with the Board of Appeal of the National Board of Patents and Registration of Finland within 60 days from the date on which the appellant was informed of the decision. The appellant shall within the same time limit pay the prescribed fee. Failing

this, the appeal shall not be heard.

Decisions by the Board of Appeal may be appealed against to the Supreme Administrative Court within 60 days of the date the appellant was informed of the decision.

The provisions of the fifth paragraph of Section 22 concerning publicity of documents relating to patents, apply *mutatis mutandis* also to documents to be submitted to the Board of Appeal and the Supreme Administrative Court.

### **Chapter 3. International Patent Application** ➔

(6.6.1980/407)

Section 28 (6.6.1980/407) "An international application" shall mean an application made under the Patent Cooperation Treaty.

International applications shall be filed with a patent authority or an international organization (receiving Office) authorized under the Patent Cooperation Treaty and its Regulations to receive such applications. The receiving Office in Finland shall be the National Board of Patents and Registration of Finland, as laid down by Government decree. Applicants filing an international application in Finland shall pay the prescribed fee.

Sections 29 to 38 apply to international applications in which Finland is designated.

Section 29 (6.6.1980/407) An international application to which a receiving Office has assigned an international filing date shall have the same effect in Finland as a Finnish application filed on the same date. The second sentence in the second paragraph of Section 2 shall apply only to an international application that has been pursued under Section 31.

Section 30 (6.6.1980/407) An international application shall be deemed withdrawn as far as the designation of Finland is concerned in the cases referred to in Article 24(1)(i) and (ii) of the Patent Cooperation Treaty.

Section 31 (10.5.1985/387) Where an applicant wishes to pursue an international application in Finland, he shall file with the Patent Authority a translation in Finnish or Swedish of the international application within 20 months of the international filing date or, where priority is claimed, of the priority date, to the extent prescribed by the Government, or a copy of the application where it is written in Finnish or Swedish. The applicant shall pay the prescribed fee to the Patent Authority within the same period.

Where an applicant has requested that the international application be the subject of an international preliminary examination, and if within 19 months of the date referred to in the first paragraph of this Section he had stated his intention under the Patent Cooperation Treaty and its Regulations to use the results of the international preliminary examination in applying for a patent for Finland, he shall comply with the requirements of the first paragraph within 30 months of that date.

If the applicant has paid the prescribed fee within the time limit laid down in the first or second paragraph, the required translation or a copy of the application may be filed within a further period of two months, provided the prescribed additional fee is paid within that same period.

If the applicant does not satisfy the requirements of this Section, the application shall be deemed withdrawn as far as Finland is concerned.

Section 32 (10.5.1985/387) Where an applicant withdraws his request for international preliminary examination or his statement of his intention to use the results of such examination in applying for a patent in Finland, the international application shall be deemed withdrawn as far as Finland is concerned. The application shall not be deemed withdrawn, however, if withdrawal is made prior to the expiration of the time limit laid down in the first paragraph of Section 31 and if the applicant also pursues the application within the time limit laid down in the first or third paragraph of Section 31.

Section 33 (6.6.1980/407) Where an international application has been pursued under Section 31, Chapter 2 shall apply in respect of the application and examination unless otherwise provided in this Section or in Sections 34 to 37. However, the application may be taken up for examination prior to expiration of the period laid down in the first and second paragraphs of Section 31 only if so requested by the applicant.

The obligation under Section 12 of the applicant to have a representative residing in the European Economic Area shall not begin until the date when the application may be taken up for prosecution. (30.6.2000/650)

The second and third paragraphs of Section 22 shall take effect even before the application has been pursued, once the applicant has complied with the requirement under Section 31 to file a translation of the application or, if the application is in Finnish or Swedish, once the applicant has filed a copy of the application with the Patent Authority. (10.5.1985/387)

For the purposes of Sections 48, 56 and 60, the international application is deemed to have become available to the public once the applicant has fulfilled the obligations under the third paragraph. (10.5.1985/387)

Where the application satisfies the requirements as to form and contents laid down by the Patent Cooperation Treaty and its Regulations, it shall be accepted in that respect.

Section 34 (21.3.1997/243) A notice referred to in the first paragraph of Section 19 concerning acceptance of an international patent application may not be given, nor may such patent application be rejected before expiration of the time limit laid down by the Government, unless the applicant agrees to an earlier ruling on the application.

Section 35 (21.3.1997/243) An international application may not, without the consent of the applicant, be published, in printed form or another similar manner, nor may a patent be granted on an invention that is the subject matter of such application by the Patent Authority prior to its publication by the International Bureau of the World Intellectual Property Organization or prior to the expiration of a period of 20 months after the international filing date or, where priority is claimed, after the priority date.

Section 36 (6.6.1980/407) Where a part of an international application has not been the subject of an international search or an international preliminary examination on the grounds that the application is held to include independent inventions and the applicant has not paid the additional fee laid down by the Patent Cooperation Treaty within the prescribed period, the Patent Authority shall ascertain whether the decision not to conduct a search or an examination was correct. Where the Patent Authority considers that the decision was correct, that part of the application that has not been the subject of a search or an examination shall be deemed withdrawn before the Patent Authority unless the applicant pays the prescribed fee within two months of the date on which he receives notification of

the Patent Authority's decision. Where the Patent Authority considers the decision to have been incorrect, it shall proceed with examination of the application in its entirety.

The applicant may appeal against a decision taken under the first paragraph in such cases where the Patent Authority has found that the application includes independent inventions. The first and second paragraphs of Section 27 shall apply mutatis mutandis. (21.3.1997/243)

Where the appeal authority upholds the decision of the Patent Authority, the time limit for payment of the fee referred to in the second sentence of the first paragraph above shall be computed as from the date on which the decision of the appeal authority becomes final.

Section 37 (6.6.1980/407) Where a part of an international application has not been the subject of an international preliminary examination because the applicant has restricted the claims after being invited by the International Preliminary Examining Authority either to restrict his claims or to pay an additional fee, that part of the application not examined shall be deemed withdrawn before the Patent Authority unless the applicant pays the prescribed fee within two months of the date he received the corresponding notification from the Patent Authority.

Section 38 (6.6.1980/407) Where a receiving Office has refused to accord an international filing date to an international application or has stated that the application is deemed withdrawn or that designation of Finland is deemed withdrawn, the Patent Authority shall review the decision if the applicant so requests. The same shall apply to any decision by the International Bureau to the effect that an application is deemed withdrawn.

A request for review under the first paragraph shall be filed with the International Bureau within the time limit laid down by the Government. Within that same time limit, the applicant shall file with the Patent Authority a translation of the application, to the extent prescribed by the Government, and shall pay the prescribed application fee. (10.5.1985/387)

Where the Patent Authority finds that the decision by the receiving Office or by the International Bureau was incorrect, it shall examine the application as provided in Chapter 2. If the receiving Office has not accorded an international filing date, the application shall be deemed to have been filed on the date that the Patent Authority considers should have been accorded as the international filing date. Where the application satisfies the requirements as to form and contents laid down by the Patent Cooperation Treaty and its Regulations, it shall be accepted in that respect.

The second sentence of the second paragraph of Section 2 shall apply to applications accepted for examination under the third paragraph of this Section if the application is made available to the public under Section 22.

#### **Chapter 4. The Scope and Term of a Patent ➔**

Section 39 The scope of protection conferred by a patent shall be determined by the claims. The description may serve as guidance for interpreting the claims.

Section 40 (6.6.1980/407) A granted patent may be maintained for 20 years from the date on which the application was filed.

A prescribed renewal fee shall be payable for the patent in respect of each fee year beginning after the grant. If a patent is granted before renewal fees for the application have

become due under Section 41, the proprietor of the patent shall also be required to pay renewal fees for the fee years beginning prior to the grant of the patent, at the time the renewal fee for the patent becomes due for the first time. (10.5.1985/387)

## **Chapter 5. Renewal fees** ➔

(10.5.1985/387)

Section 41 (10.5.1985/387) The renewal fee shall be payable on the last day of the calendar month during which the fee year begins. The renewal fees for the first two years, however, shall not become payable until the fee for the third fee year is due. renewal fees may not be paid earlier than six months before the due date.

For a later application under Section 11, the renewal fees for fee years which have begun before the filing date of the later application, or which begin within two months of that date, shall in no event become due before two months have elapsed since such date. The renewal fees for an international application in respect of fee years which have begun before the date on which the application was pursued under Section 31 or was taken up for processing under Section 38 or which begin within two months of such date shall in no event become due before two months have elapsed following the date on which the application was pursued or otherwise prosecuted.

Renewal fees, together with prescribed additional fees, shall be payable within the six months following the due date.

Section 42 (10.5.1985/387) Where the applicant or proprietor of the patent is the inventor and if he experiences serious difficulty in paying the renewal fees, the Patent Authority may grant him respite in respect of payment if he makes a corresponding request no later than the date on which renewal fees become due for the first time. Respite may be granted for up to three years at a time, but at most up to the third year that has elapsed following grant of the patent. A request for prolongation of respite must be made before the existing respite has expired.

If the request for respite or prolongation of respite is refused, any fee paid within two months of refusal shall be deemed to have been paid on time.

The renewal fees for which respite of payment has been granted under the first paragraph may be paid together with the additional fee prescribed in the third paragraph of Section 41 within the six months following the date up to which respite was granted.

## **Chapter 6. Assignment, Licences and Compulsory licences** ➔

Section 43 Where the proprietor of the patent has granted another person the right to exploit the invention commercially (a licence), the licensee shall not be entitled to assign his right to a further party, except as otherwise agreed.

Section 44 The transfer of patents and the grant of licences shall be recorded, on request, in the Patent Register. The same shall apply to the pledging of a patent.

On proof that a licence or a pledge recorded in the Register is no longer in force, the entry of that licence or pledge shall be deleted from the Register.



The first and second paragraphs shall apply mutatis mutandis to compulsory licences and to rights under the second paragraph of Section 53.

The person last recorded in the Register as the patentee shall be deemed the proprietor for the purposes of law suits and for other matters concerning the patent.

If a person acting in good faith has requested the Patent Authority to record in the Register that a patent has been assigned to him or that he has obtained a licence under a patent or a pledge of a patent, prior assignment of the patent or rights therein shall not be enforceable against him if the other party has not previously requested registration as the assignee or proprietor of rights in the patent.

Section 45 Where three years have elapsed since the grant of the patent and four years have elapsed from the filing of the application, and if the invention is not worked or brought into use to a reasonable extent in Finland, any person who wishes to work the invention in Finland may obtain a compulsory licence to do so unless legitimate grounds for failing to work the invention may be shown. (22.12.1995/1695)

Subject to reciprocity, the Government may decree that, for the purposes of the first paragraph of this Section, the working of an invention in a foreign State shall be deemed equivalent to working in this country.

Section 46 The proprietor of a patent for an invention whose exploitation is dependent on a patent held by another person may obtain a compulsory licence to exploit the invention protected by such patent if deemed reasonable in view of the importance of the first-mentioned invention or for other special reasons.

The proprietor of a patent in respect of which a compulsory licence is granted under the first paragraph of this Section may obtain a compulsory licence to exploit the other invention unless there are special reasons to the contrary.

Section 46 a (30.6.2000/650) Where a breeder cannot acquire or exploit a plant variety right without infringing a prior patent, he may apply for a compulsory licence for non-exclusive use of the invention protected by the patent inasmuch as the licence is necessary for the exploitation of the plant variety to be protected, subject to payment of an appropriate royalty. Where such a licence is granted, the holder of the patent will be entitled to a cross-licence on reasonable terms to use the protected variety.

Applicants for the licence referred to in paragraph 1 above must demonstrate that they have applied unsuccessfully to the holder of the patent to obtain a contractual licence and that the plant variety constitutes significant technical progress of considerable economic interest compared with the invention claimed in the patent.

Provisions concerning the right of a patent holder to obtain a compulsory licence for the exploitation of a plant variety protected by plant breeder's right are laid down by the Act on Plant Breeders' Rights (No. 789/1992).

Section 47 In the event of considerable public interest, a person who wishes to exploit commercially an invention for which another person holds a patent may obtain a compulsory licence to do so.

Section 48 Any person who was commercially exploiting in this country an invention which is the subject of a patent application, at the time the application documents were made available under Section 22, shall, if the application results in a patent, be entitled to a



compulsory licence for such exploitation, provided there are special reasons for this and also provided that he had no knowledge of the application and could not reasonably have obtained such knowledge. Such a right shall also be enjoyed, under corresponding conditions, by any person who has made substantial preparations for commercial exploitation of the invention in this country. Compulsory licences may also relate to the period of time preceding the grant of the patent.

Section 49 (22.12.1995/1695) A compulsory licence may only be granted to a person deemed to be in a position to exploit the invention in an acceptable manner and in accordance with the terms of the licence who, before filing a claim for a compulsory licence, has made a verifiable effort to obtain, on reasonable commercial terms, a licence to the patented invention. A compulsory licence shall not prevent the proprietor of the patent from exploiting the invention himself or from granting licences under the patent. A compulsory licence may only be transferred to a third party together with the business in which it is exploited or was intended to be exploited.

Section 50 Compulsory licences shall be granted by a court of law, which shall also decide the extent to which the invention may be exploited and shall determine the remuneration to be paid and any other conditions under the licence. In the event of a substantial change in the circumstances, the court may, on request, revoke the licence or lay down new conditions.

## **Chapter 7. Termination of the Patent** ➔

Section 51 (10.5.1985/387) If the renewal fee under Sections 40, 41 and 42 is not paid, the patent shall lapse as from the start of the fee year for which the fee has not been paid.

Section 52 (6.6.1980/407) The court shall declare a patent invalid, in a relevant action:

- (1) if the patent relates to an invention that does not satisfy the requirements of Sections 1, 1 a, 1 b, or 2;
- (2) if the patent relates to an invention the description of which is not sufficiently clear to enable a person skilled in the art to carry out the invention;
- (3) if the patent contains subject matter not included in the application as filed; or
- (4) if the scope of protection was extended after the notice referred to in the first paragraph of Section 19 was given. (30.6.2000/650)

A patent may not be declared invalid on the grounds that the patentee was entitled to a specified part of it only.

Legal proceedings may also be instituted, with the exception laid down in the fourth paragraph of this Section, by any person who suffers prejudice on account of the patent or by a public authority appointed by the Government for reasons of public interest.

Proceedings instituted on the grounds that a patent has been granted to a person other than the person entitled to it under the provisions of Section 1 may only be instituted by the person claiming entitlement to the patent. Such proceedings shall be brought within one year after the entitled person gained knowledge of the grant of the patent and of any other circumstances on which the proceedings are founded. Proceedings may not be instituted

more than three years after the grant of the patent where the proprietor of the patent acted in good faith at the time the patent was granted or assigned to him.

Section 53 Where a patent has been granted to a person other than the person entitled to the patent under Section 1 and where proceedings are instituted by that entitled party, the court shall transfer the patent to that party. The fourth paragraph of Section 52 shall apply with respect to the time limit within which proceedings shall be instituted. (6.6.1980/407)

Where the person deprived of the patent had, in good faith, begun commercial exploitation of the invention in this country or had made substantial preparations for exploitation, he shall be entitled, against reasonable remuneration and on other reasonable terms, to continue the exploitation already begun or to commence the intended exploitation, provided that its general nature is maintained. Subject to the same conditions, a holder of a licence recorded in the Patent Register shall have the same rights.

Rights under the second paragraph of this Section may only be transferred to third parties together with the business in which they are exploited or in which exploitation was planned.

Section 54 Where the proprietor of a patent surrenders his patent in writing to the Patent Authority, that Authority shall declare the patent to be terminated.

Where a patent is in distraint or if a litigation is pending on the transfer of a patent, the patent may not be declared terminated while the distraint is effective or before a final decision is given in the proceedings. The same shall apply if a pledge has been recorded in the Patent Register.

Section 55 (6.6.1980/407) Where a patent has lapsed or been declared terminated, or been declared invalid by a final court decision or been transferred, the Patent Authority shall publish an announcement of that fact.

### **Chapter 8. Obligation to Provide Information ➔**

Section 56 An applicant who invokes his patent application against another person before the documents in the application file have become available under Section 22 shall be required, on request, to allow such person to have access to the documents. If the patent application includes the deposit of a biological material under Section 8a, such consent shall also include the right to obtain a sample of the deposit. The second and third sentences of the sixth paragraph and the seventh and eighth paragraphs of Section 22 shall apply in the event of a person wishing to obtain a sample on the basis of such consent. (30.6.2000/650)

Any person who indicates in addressing himself directly to other persons or in announcements or by markings on goods or their packaging or in any other way that a patent has been applied for or granted, without at the same time indicating the number of the application or the patent, shall be required, on request, to furnish such number without delay. Where it is not explicitly stated that a patent has been applied for or granted, but the circumstances are such as to create the impression that this is the case, information as to whether a patent has been applied for or granted shall be given on request without delay.

### **Chapter 9. Liability, Obligation to Pay Compensation and Court**

## ***Proceedings*** ➔

Section 57 The court may forbid any person who infringes the exclusive right afforded by a patent (patent infringement) from continuing or repeating the act.

Where such person intentionally infringes a patent, he shall, unless the act is punishable as an industrial property right offence under Section 2 of Chapter 49 of the Penal Code, be liable to a fine for a violation of a patent right.

Indictment for this offence may only be brought by the Public Prosecutor at the request of the injured party.

Section 58 Any person who intentionally or negligently infringes a patent shall be liable to pay reasonable compensation for the exploitation of the invention and damages for other injury caused by the infringement. In the case of slight negligence, the compensation may be adjusted accordingly.

A person found guilty of patent infringement that is neither intentional nor negligent shall pay compensation for the exploitation of the invention if and to the extent held reasonable.

Compensation proceedings for patent infringement shall only refer to damage during the last five years prior to institution of proceedings. The right to compensation for damage suffered prior to that period shall lapse.

Section 59 At the request of the party injured by patent infringement, the court may order, to the extent deemed reasonable for the prevention of further infringement, that patented products manufactured without the consent of the proprietor of the patent, or objects whose use would constitute patent infringement, shall be altered in a specified manner or be impounded for the remainder of the term of the patent or be destroyed or, in the case of patented products, be surrendered against payment of their value to the injured party. This provision shall not apply to anyone who has acquired such objects of property or special rights in respect of such objects in good faith and who has not himself infringed the patent.

The objects of property referred to in the first paragraph may be seized if it is reasonable to assume that the offence referred to in Section 2 of Chapter 49 of the Penal Code or in Section 57 of this Act has been committed. In such case, the provisions on seizure in the Coercive Criminal Investigation Means Act shall apply. (21.4.1995/717)

Notwithstanding the provisions of the first paragraph, the court may order, on request, if there are special reasons for this, that the holders of objects referred to in the first paragraph shall be able to dispose of the objects for the remainder of the patent term or for a part thereof, against reasonable compensation and on reasonable conditions.

Section 60 (21.3.1997/243) Where any person commercially exploits an invention which is the subject of a patent application after the application documents have been made available under Section 22, the provisions on patent infringement shall apply mutatis mutandis, if the application results in a patent. However, until a patent has been granted under Section 20, protection shall extend only to the subject matter disclosed both in the claims as worded when the application became available to the public and in the claims according to the patent. There shall be no liability to punishment, and damages arising from exploitation prior to the granting of the patent may be assessed only on the basis of the second paragraph of Section 58.

The provisions of the third paragraph of Section 58 concerning damages shall not apply if action for compensation is brought within one year of the period for lodging an opposition concerning the patent or, if an opposition has been lodged, within a year from the date on which the Patent Authority has decided to maintain the patent.

Section 61 Where a patent has been revoked by a final decision or declared invalid in a final court decision, no penalty, payment of compensation or other measures may be ordered under Sections 57 to 60. (21.3.1997/243)

Where the defendant in infringement proceedings claims that the patent is invalid, the court may, at the defendant's request, stay proceedings until validity has been determined. Where no such action has been brought by the defendant the court shall order him, in connection with the stay of proceedings, to bring such action within a period of time it shall determine.

In a case concerning invalidation of a patent, the court may, at its discretion, postpone the taking of a decision on a principal claim referred to in Section 1 of Chapter 24 of the Procedural Code if the action has been brought in a competent court before the expiry of the time limit for lodging an opposition after the grant of the patent or before a final decision has been issued on the opposition. (21.3.1997/243)

Section 62 Any person who by intention or negligence, other than slight negligence, fails to comply with Section 56 shall be sentenced to a fine.

Any person who, in the instances described in Section 56, provides incorrect information shall also be sentenced to the same penalty, unless the offence is punishable under the Penal Code.

Indictment for an offence referred to in this Section may be brought by the Public Prosecutor only at the request of the injured party.

Section 63 The proprietor of a patent or any person authorized to exploit an invention under licence may bring an action before the court for a declaratory judgment to establish whether he enjoys protection against other parties on the basis of the patent in the event of uncertainty that may be prejudicial to him.

Any person who carries on or intends to carry on a commercial activity may, subject to the same conditions, bring an action against the proprietor of the patent to obtain a declaratory judgment to determine whether the patent constitutes an obstacle to such activity.

If it is claimed, under an action brought pursuant to the first paragraph of this Section, that the patent is invalid, the second paragraph of Section 61 shall apply *mutatis mutandis*.

Section 64 Any person who wishes to bring an action for invalidation of a patent, transfer of a patent or grant of a compulsory licence shall advise the Patent Authority thereof and shall notify all persons recorded in the Patent Register as licensees or pledgees thereof. If a licensee wishes to bring an action for infringement or for a declaratory judgment under the first paragraph of Section 63, he shall notify the proprietor of the patent thereof.

The requirement to notify pursuant to the first paragraph shall be deemed satisfied when notification by registered letter has been sent to the addresses recorded in the Patent Register.

If it cannot be shown, at the time the action is brought, that advice or notification has been effected pursuant to the first paragraph, the plaintiff shall be given a time limit to do so. If such time limit is exceeded, the action shall not be heard.

Section 65 The District Court of Helsinki shall be competent to hear proceedings in respect of: (22.12.1995/1695)

- (1) proper title to the invention for which a patent is sought;
- (2) invalidation or transfer of a patent;
- (3) grant of a compulsory licence, determination of new conditions for or revocation of such licence or rights under the second paragraph of Section 53;
- (4) infringement;
- (5) declaratory judgments pursuant to Section 63; or
- (6) assessment of compensation under Section 75.

In addition to the cases provided in the first paragraph, the District Court of Helsinki shall also be competent in matters concerning the right to an invention for which a European patent under the European Patent Convention (Finnish Treaty Series 8/96) has been sought. A prerequisite for hearing such case in the District Court of Helsinki is that the defendant is domiciled in Finland or that the plaintiff is domiciled in Finland and the defendant is not domiciled in a country which is party to the European Patent Convention. The District Court of Helsinki shall also hear the case if the parties to the dispute have agreed that the District Court of Helsinki shall be competent in the case. (22.12.1995/1695)

A dispute referred to in the first paragraph may not be heard by the District Court of Helsinki if the same dispute between the same parties is pending before the court of another country that is party to the European Patent Convention. If the competence of such foreign court has been contested, the District Court of Helsinki shall postpone the hearing of the case until the question of competence has been finally decided upon by the foreign Court. (22.12.1995/1695)

Section 65 a (22.12.1995/1695) A final decision taken by a court of a Contracting State of the European Patent Convention in a dispute referred to in the second paragraph of Section 65 is enforceable in Finland. A court decision passed on the applicant for a European patent, is not, however, enforceable in Finland, if the writ of summons has not been duly served to him or if he has not been afforded a sufficient time for preparing himself for the court proceedings.

Section 66 In proceedings pursuant to Section 65, the District Court shall be assisted by two technical experts to be appointed by the Court. The experts shall give their views on the matters submitted to them by the Court. Their views shall be entered in the record. The experts shall be entitled to question the parties and the witnesses.

Section 67 The District Court shall appoint an appropriate number of experts as referred to in Section 66 for each calendar year. Before making the appointments, the Court shall request the opinion of the Technical Research Centre of Finland. Such appointment may not be refused without statutory justification. (21.3.1997/243)

Before taking up his appointment, an expert shall be required to take the prescribed oath.

Experts shall be paid a reasonable fee for each case as laid down by the Court together with compensation for travelling expenses as prescribed by the Government.

Section 68 At the request of the plaintiff, the Court may grant an interlocutory injunction on use of the patent or may order that the objects of property referred to in Section 59 be provisionally seized for the duration of the proceedings.

Where the Court has granted an injunction or ordered seizure under the first paragraph of this Section, the plaintiff may be required to provide such security as the Court accepts for any damage or inconvenience that may be suffered by the other party due to the action.

Relief from a decision on injunction or seizure or the lifting of such measures during the course of the proceedings may be sought by separate appeal.

Section 69 In proceedings for invalidation of a patent, the Court shall request the view of the Patent Authority.

In other proceedings concerning patents, the Court may request the view of the Patent Authority as required by the circumstances of the case.

Section 70 Copies of decisions under Section 65 shall be communicated by the court to the Patent Authority with a statement as to whether the decision has become final.

### **Chapter 9 a. Supplementary Protection Certificates** ➔

(21.3.1997/243)

Section 70 a (21.3.1997/243) Provisions on Supplementary Protection Certificates are given in the Council Regulation (EEC) No 1768/92 providing for the creation of a supplementary protection certificate for medicinal products and in the European Parliament and Council Regulation (EC) No 1610/96 concerning the adoption of a supplementary protection certificate for plant protection products. In addition, the provisions of this Chapter shall apply in respect of supplementary protection certificates.

Section 70 b (28.6.1994/593) Applications for supplementary protection certificates shall be filed with the National Board of Patents and Registration of Finland.

Section 70 c (28.6.1994/593) The applicant shall pay the prescribed application fee. The proprietor of the certificate shall pay the prescribed renewal fee for the supplementary protection certificate.

Section 70 d (28.6.1994/593) Provisions concerning infringement of patent rights apply to infringement of rights conferred by a supplementary protection certificate.

Section 70 e (28.6.1994/593) More specific regulations concerning implementation of the provisions of this Chapter and the procedure to be followed in applying for and granting supplementary protection certificates may be decreed by the Government.



## **Chapter 9 b. European Patent and Application for European Patent ➡**

(22.12.1995/1695)

Section 70 f (22.12.1995/1695) For the purposes of this Act, a European patent is a patent which has been granted by the European Patent Office under the European Patent Convention. A European patent application is a patent application filed under said Convention.

A European patent may be granted as having effect in Finland.

An application for a European patent shall be filed with the European Patent Office. Such application may also be filed with the Finnish Patent Authority to be transmitted by the Patent Authority to the European Patent Office. However, European patent applications relating to inventions referred to in the Act on Inventions of Importance to the Defense of the Country (No. 551/67) shall be filed with the Finnish Patent Authority. Applications referred to in Article 76 of said Convention (European divisional applications) shall always be filed with the European Patent Office.

The provisions of this Chapter shall apply to European patents and European patent applications designating Finland.

Section 70 g (22.12.1995/1695) A European patent is granted when the European Patent Office has announced its decision to allow the patent application. The European patent having effect in Finland has the same legal effect as a patent granted by the Finnish Patent Authority and is also otherwise subject to the same conditions as such patent, unless otherwise provided for in this Chapter.

Section 70 h (22.12.1995/1695) A European patent has effect in this country only if the applicant or patent proprietor has supplied, within the prescribed period, to the Patent Authority a translation into Finnish of the documents forming the basis for granting the patent, and within the same period has paid the prescribed fee for printing the translation, as stipulated in more detail by decree. If the applicant's or patent proprietor's own language is Swedish, the translation may, however, be filed in Swedish. If the European Patent Office rules that a European patent shall be maintained with amended wording this shall also apply with respect to the amended documents.

The translation shall be available to anyone, provided that the European Patent Office has published the European patent application or has announced its decision to grant the patent.

If a translation has been supplied and the fee paid within the prescribed period and if the European Patent Office has announced its decision to allow the patent application or its decision that the European patent shall be maintained with amended wording, the Patent Authority shall without delay issue an announcement to that effect in Finnish and Swedish. As soon as possible, copies of the translation shall be obtainable to the public. The Patent Authority shall see to it that the claims of the European patent are, where necessary, available both in Finnish and Swedish.

Section 70 i (22.12.1995/1695) The provisions of the first paragraph of Section 71a correspondingly apply to filing of a translation under the first paragraph of Section 70h and payment of a fee for printing the translation. If it is decided under the first paragraph of Section 71a that the act shall be deemed to have been completed within the prescribed



time limit, the Patent Authority shall without delay make an announcement to that effect both in Finnish and Swedish.

If anyone, after the time limit according to the first paragraph of Section 70h has expired but before the announcement according to the first paragraph above has been published, has in good faith begun to use the invention commercially in this country or has made substantial preparations therefor, he shall enjoy the right provided in the second and third paragraphs of Section 71c.

Section 70 j (22.12.1995/1695) The provisions of the first paragraph, subparagraph 4, of Section 52, concerning extension of scope of patent protection, shall also apply to a European patent if the scope of patent protection has been extended after the grant of the European patent.

Section 70 k (22.12.1995/1695) If the European Patent Office has revoked a European patent in its entirety or in part, this revocation shall have effect as if the patent in this country were declared invalid to the corresponding extent. The Finnish Patent Authority shall without delay announce the revocation both in Finnish and Swedish.

Section 70 l (22.12.1995/1695) Prescribed renewal fees shall be paid for each fee year beginning after the year in which the European Patent Office announced its decision to allow the patent application.

If an renewal fee for a European patent is not paid according to the provisions in the first paragraph and in Section 41, Section 51 shall be correspondingly applicable. The first renewal fee is not, however, due for payment before two months have passed from the date on which the patent was granted.

Section 70 m (22.12.1995/1695) A European patent application which has been accorded a filing date by the European Patent Office shall have the same effect in this country as a Finnish patent application filed on said date. If the application under the European Patent Convention enjoys priority from an earlier date than the filing date, such priority shall have effect also in Finland.

For the purposes of the second paragraph of Section 2, the publication of a European patent application pursuant to Article 93 of the European Patent Convention shall be equivalent to the application becoming available to the public pursuant to Section 22. This shall also apply to publication referred to in Article 158(1) of the Convention if said publication is ruled by the European Patent Office to be equivalent to publication pursuant to Article 93.

Section 70 n (22.12.1995/1695) If a European patent application has been published under Article 93 of the European Patent Convention and a translation into Finnish of the patent claims as worded when published has been filed with the Patent Authority, the Patent Authority shall make the translation available to anyone and make an announcement in Finnish and Swedish to this effect. If the applicant's own language is Swedish, the translation may, however, be filed in Swedish. The Patent Authority shall see to it that the published patent claims are, where necessary, available to the public in Finnish and Swedish.

If anyone uses an invention commercially for which patent protection is sought by a European patent application after the announcement pursuant to the first paragraph has been made, the provisions concerning patent infringement shall apply correspondingly if the application results in a patent for Finland. In such case, however, the patent protection shall

only extend to that revealed in both the patent claims as worded when published and the claims according to the patent. Punishment shall not be imposed in this case and damages for use taken place before the announcement referred to in the first paragraph may only be determined pursuant to the second paragraph of Section 58.

The provisions of the third paragraph of Section 58 shall not apply if the action for compensation is brought within one year after the period for opposition against the patent has expired or, if opposition has been lodged, within one year after the decision by the European Patent Office to maintain the patent.

Section 70 o (22.12.1995/1695) If a European patent application or request that such application shall designate Finland has been withdrawn, this shall have the same effect as withdrawal of a national patent application. The same shall apply in respect of a situation where an application under the European Patent Convention shall be deemed to have been withdrawn and where processing of the application has not been resumed pursuant to Article 121 of the Convention.

If a European patent application has been rejected, this shall have the same effect as rejection of a national patent application.

Section 70 p (22.12.1995/1695) If the translation referred to in Section 70h or 70n does not coincide with the wording of the documents in the language of the proceedings before the European Patent Office, the patent protection shall only extend to that which is evident from both texts.

In the revocation proceedings referred to in Section 52, the text in the language of the proceedings shall be the sole authentic text.

Section 70 q (22.12.1995/1695) If the applicant or the proprietor of a patent files with the Patent Authority a correction of the translation referred to in Section 70h and pays the prescribed fee for printing the corrected translation, the corrected translation shall apply in place of the original translation. Once the correction has been filed and the fee paid, and if the original translation is available to anyone, the Patent Authority shall without delay announce said correction in Finnish and Swedish and, as soon as possible, make copies of the corrected translation obtainable from the Patent Authority.

If the applicant files a correction of the translation referred to in Section 70n, the Patent Authority shall without delay make an announcement of the correction in Finnish and Swedish and keep the corrected translation available to anyone. After the announcement the corrected translation shall apply in place of the original translation.

If anyone, before the corrected translation became valid, has, in good faith, begun to use the invention commercially in this country in a manner which according to the earlier translation did not constitute infringement of the right of the applicant or of the proprietor of the patent, or has made substantial preparations therefor, he shall enjoy the right specified in the second and third paragraphs of Section 71c.

Section 70 r (22.12.1995/1695) If the applicant or the proprietor of a patent has failed to observe the time limit prescribed in the European Patent Convention, but the European Patent Office, nevertheless, under Article 122 declares that no loss of right has ensued, this shall have the same effect also in Finland.

If anyone, after the loss of right has ensued but prior to the announcement by the European Patent Office of the declaration referred to in the first paragraph, began, in good faith, to

use the invention commercially in this country or made substantial preparations therefor, he shall enjoy the right specified in the second and third paragraphs of Section 71c.

Section 70 s (22.12.1995/1695) If a European patent application which has been filed with a national patent authority shall be deemed to be withdrawn because the European Patent Office did not receive it within the prescribed time limit from the national patent authority that received the application, at the request of the applicant, the Patent Authority shall take up the application as converted to a national application, provided:

(1) that the request is filed with the authority which received the patent application within three months from when the applicant was notified by the European Patent Office that the application was deemed withdrawn;

(2) that the request is received by the Finnish Patent Authority within 20 months from the date of filing of the application or, if priority is claimed, the day from which priority is claimed; and

(3) the applicant pays, within the prescribed time limit, the prescribed application fee and files a translation, pursuant to the fifth paragraph of Section 8, of the patent application.

If an application for a European patent shall be deemed to be withdrawn because the European Patent Office did not receive the translation in the language of the proceedings within the prescribed time limit, at the request of the applicant, the Patent Authority shall take up the application as converted to an application for a national patent, in compliance with the provisions of Articles 135 and 136 of the European Patent Convention. The applicant shall also pay the prescribed application fee and file the translation of the patent application according to the fifth paragraph of Section 8 within the prescribed time limit.

If the patent application referred to in the first and second paragraphs fulfills the requirements regarding the form of the application laid down in the European Patent Convention and its Implementing Regulations, it shall be accepted in this respect.

## **Chapter 10. Special Provisions** ➔

Section 71 The proprietor of a patent who is not domiciled in Finland shall be required to appoint a representative residing in the European Economic Area with authority to receive service of writs of indictment or summonses and other documents in proceedings and matters concerning the patent, with the exception of writs of indictment in penal cases and of summonses to appear personally before a court. The name of the representative appointed shall be communicated for recording in the Patent Register. (30.6.2000/650)

If the proprietor of a patent has not appointed a representative pursuant to the first paragraph of this Section, notification can be effected by sending the document to be served to him by registered mail to his address as recorded in the Patent Register. If no address is recorded in the Register, notification can be effected by announcement in the patent gazette. Notification shall be deemed to have been effected when the procedure described herein has been completed. (21.3.1997/243)

Subject to reciprocity, the Government may decree that the first and second paragraphs of this Section shall not apply to the proprietor of a patent domiciled in a specified foreign country, or to the proprietor of a patent having a representative domiciled in such country, provided the name of the representative is communicated for recording in the Patent Register of Finland and is authorized as prescribed in the first paragraph of this Section.

If it has not been possible to notify the person who has filed an opposition of a decision concerning the opposition at the address he has furnished, notification may be effected by announcement in the patent gazette. Notification shall be deemed to have been effected when the procedure described herein has been completed. (21.3.1997/243)

Section 71 a (10.5.1985/387) If a patent applicant or the proprietor of a patent, in a case other than the one referred to in the second paragraph, has suffered loss of rights because he has not taken action before the Patent Authority within the time limit laid down in this Act or its Regulations, but but has taken all due care required by the circumstances to observe the time limit, and if he takes such action within two months of the time at which the cause of his non-compliance ceases -- and in any event not later than one year after expiration of the time limit -- the Patent Authority shall declare that the act shall be deemed to have been done within the prescribed time limit. If the applicant or the proprietor of a patent wishes to obtain such declaration, he shall advise the Patent Authority in writing thereof within the time limits laid down for taking the action and pay the prescribed fee. (22.12.1995/1695)

The first paragraph shall similarly apply to an applicant or to the proprietor of a patent who has not paid the renewal fee within the time limit laid down in the third paragraph of Section 41 or the third paragraph of Section 42. In such case, however, the renewal fee shall be paid and the request submitted within six months of expiry of that time limit.

The first paragraph shall not apply to the time limit laid down in the first paragraph of Section 6.

The first paragraph of this Section shall also apply to international applications which have been pursued in Finland as regards the time limit to be observed with respect to the receiving Office, the International Searching Authority, the International Preliminary Examining Authority and the International Bureau of WIPO. Failure to observe that time limit must then be remedied at the Patent Authority. However, this provision shall not concern the time limit within which the application has to be filed in order to enjoy the priority of an earlier application.

Section 71 b (6.6.1980/407) Where, in those cases referred to in Sections 31 or 38, a document or a fee sent by mail has not been received by the Patent Authority within the prescribed time limit, but where the applicant performs the required act within two months of the time at which he realized or should have realized that the time limit has been exceeded, but in no event later than one year after expiration of the time limit, the Patent Authority shall declare that the act is to be deemed to have been done within the prescribed time limit:

(1) if the postal service was interrupted at any time during the 10 days preceding the time limit on account of war, revolution, civil disorder, strike, natural disaster or other like reason in the locality in which the sender was staying or carrying on business, and the document or fee was mailed to the Patent Authority within five days of the resumption of the postal service, or

(2) if the document or fee was mailed to the Patent Authority by registered mail not later than five days before the expiration of the time limit, but only if it was sent by airmail, where possible, or by other means if the sender could reasonably assume that the dispatch should reach the Patent Authority within two days of mailing.

Where the applicant requests a declaration under the first paragraph of this Section, he shall advise the Patent Authority in writing to that effect within the time limit for taking the action laid down in that paragraph.

Section 71 c (6.6.1980/407) If a request under Section 71a or 71b is granted and if, as a result, the examination of a patent application that has been dismissed or rejected after becoming available to the public under Section 22 is resumed or a lapsed patent is reinstated, an announcement to that effect shall be made.

Any person who in good faith has begun to exploit an invention commercially in this country after expiration of the time limit for reinstating a dismissed application or after a rejection has become final or a patent has lapsed, but before such announcement is made, may nevertheless continue to exploit the invention provided he maintains the general nature of the exploitation. The right to exploit an invention shall be granted, on the same conditions, to anyone who has made substantial preparations for such exploitation in this country.

The right under the second paragraph of this Section may only be transferred to another person together with the business in which it originated or in which exploitation of the invention was intended.

Section 72 (21.3.1997/243) Appeals from final decisions by the Patent Authority under this Act, other than those referred to in Section 26, and appeals from decisions pursuant to Sections 42, 71a and 71b, shall be lodged with the Board of Appeal of the National Board of Patents and Registration of Finland. Separate provisions shall apply to the appeal procedure and the proceedings in the Board of Appeal.

Section 73 (13.11.1992/1034) The amounts of the fees to be paid under this Act shall be laid down in separate provisions. In that connection it may be decreed that one or more of the initial fee years shall be exempt from renewal fees.

Section 74 More specific provisions concerning patent applications, announcements in respect of patent matters, printing of the application documents, opposition proceedings, the Patent Register and the Patent Authority shall be decreed by the Government. (21.3.1997/243)

The Government may decree that the Patent Authority be entitled to divulge, at the request of the authorities of another country, details of the processing of patent applications in this country and that the authorities of another country or an international institution may, at the request of the Patent Authority, undertake the examination of patent applications.

The Government may also decree that an applicant seeking a patent in respect of an invention for which an application has been filed in another country or with an international organization shall disclose information given to him by the authorities of such other country or by the international organization regarding the examination of his invention as to patentability. No such disclosure shall be required, however, for an application under Chapter 3 if it has been the subject of an international preliminary examination and the report on the patentability of the invention has been received by the Patent Authority. (6.6.1980/407)2

Section 75 If the country is at war or in danger of war, the Government may decree, where required by the public interest, that the right to a given invention shall be surrendered to the State or to another party designated by the Government. Reasonable compensation shall be paid for the right to the invention thus surrendered. If no agreement is reached on compensation with the party entitled to compensation, the court shall determine the compensation.

Where a party other than the State has availed itself of the right to an invention pursuant to the first paragraph and if such party does not fulfill its obligations with regard to

compensation, the State shall pay the compensation without delay on request by the party entitled to compensation.

Section 76 Special regulations shall apply to inventions of importance to the defense of the country.

*Provisions concerning entry into force of Act No. 243/96 amending the Patents Act:*

*This Act shall come into force on 1 April 1997.*

*A patent application which has been approved for being laid open for public inspection before the entry into force of this Act, shall be processed and decided on in accordance with the provisions in force before the entry into force of this Act.*

*The provisions of Section 14 of the Patents Act shall apply to a patent application filed before the entry into force of this Act.*

*This Act shall come into force on 15 July 2000.*

*The provisions of Sections 3 b and 46 a shall apply to a patent application filed or deemed to have been filed before the entry into force of this Act and to a patent granted on the basis of such application.*