

PATENTS ACT

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(RT1 I 1994, 25, 406; consolidated text RT I 1998, 74, 1227)

Amended by the following Acts:

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27.10.1999 entered into force 01.01.2000 - RT I 1999, 84, 764;

25.11.1998 entered into force 21.12.1998 - RT I 1998, 107, 1768.

Chapter I. General Provisions ➡

§ 1. Purpose of Act

This Act regulates the relations which arise in connection with the legal protection of patentable inventions (hereinafter patent protection) in the Republic of Estonia.

§ 2. Legislation providing for patent protection

Patent protection is provided for by this Act, other Acts and regulations issued by the Government of the Republic or Ministers on the basis of and for the implementation of such Acts.

§ 3. Equality of rights and obligations of natural and legal persons of the Republic of Estonia and of foreign states

The rights and obligations prescribed in this Act apply equally to natural and legal persons of the Republic of Estonia and of foreign states (hereinafter persons) unless the legislation of the Republic of Estonia or international agreements ratified by the Riigikogu provide otherwise.

§ 4. Application of international agreements

If this Act is contrary to an international agreement, the provisions of the international agreement apply.

Chapter II. Patent Protection and Patentability ➡

§ 5. Patent protection

(1) Inventions of any field of technology may be protected by a patent if the invention complies with the criteria of patentability provided for in § 8 of this Act and is considered to be unpatentable pursuant to the provisions of § 7.

(2) An invention is granted patent protection upon registration of the invention in the state register of patents pursuant to the procedure provided for in this Act. The registration of an invention in the state register of patents is deemed to be the issue of a patent.

(3) Medicinal products and plant protection products which contain an active substance protected by a patent may be granted supplementary legal protection (hereinafter supplementary protection) under the conditions and pursuant to the procedure provided for in Chapter VIII of this Act.

§ 6. Subject of invention

(1) The subject of an invention may be a device, process, material, including biological material, or a combination thereof.

(2) The following, inter alia, shall not be regarded as the subject of inventions:

1) discoveries, including descriptions of the formation or development of the human body or sequence or partial sequence of human gene, scientific theories and mathematical methods;

2) schemes, rules and methods for performing mental acts or doing business;

3) design documentation for and plans of constructions, buildings or areas;

4) symbols;

5) algorithms for computers and computer programs;

6) designs;

7) presentations of information;

8) plant and animal varieties;

9) layout-designs of integrated circuits.

(3) For the purposes of this Act, "biological material" means any material, including micro-organisms, which contains genetic information and is capable of reproducing itself or being reproduced in a biological system.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 7. Unpatentable inventions

(1) The following shall not be protected by a patent:

1) inventions which are contrary to public order and morality;

2) methods of treatment and diagnostic methods practised on the human or animal body;

3) [Repealed - RT I 2003, 18, 106 - entered into force 01.04.2003]

4) [Repealed]

(2) The following biotechnological inventions shall not be protected by a patent:

1) processes for cloning human beings;

2) processes for modifying the germ line genetic identity of human beings;

3) uses of human embryos for commercial purposes, including processes prohibited by the Artificial Insemination and Embryo Protection Act (RT I 1997, 51, 824; 2003, 18, 102);

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

5) essentially biological processes for the derivation of biological materials or the production of plant or animal varieties, except microbiological processes for the derivation of micro-organisms;

6) inventions the application of which is confined to a single plant or animal variety.

(3) For the purposes of this Act, "essentially biological process for the derivation of a biological material or production of plant or animal varieties" means a process which consists entirely of natural phenomena, including crossing and selection.

(4) For the purposes of this Act, "microbiological process" means any process involving or performed upon or resulting in microbiological material.

§ 71. Classification of inventions

Inventions are classified according to the international patent classification adopted under the Strasbourg Agreement concerning the International Patent Classification (RT II 1996, 4, 15).

§ 8. Criteria of patentability

(1) An invention is patentable if it is new, involves an inventive step and is susceptible to industrial application.

(2) An invention shall be considered to be new if it does not form part of the state of the art. The state of the art shall be held to comprise everything made available to the public by means of written or oral description, by use, or in any other way, in any part of the world before the filing date of the patent application or before the date of priority if priority is claimed. In determining novelty, the content of patent applications and the content of registration applications of utility models which were filed with the Patent Office earlier pursuant to the Utility Models Act (RT I 1994, 25, 407; 2000, 60, 388; 2001, 27, 151; 2002, 53, 336; 63, 387) shall also be taken into consideration according to their filing dates or, if priority is claimed, dates of priority provided that the patent applications are published pursuant to § 24 of this Act and registration applications of utility models are published pursuant to § 33 of the Utility Models Act.

(3) In determining the state of the art, any information relating to an invention is not taken into consideration, provided that a corresponding request is submitted, if such information is disclosed by a person who is entitled to the patent pursuant to § 12 of this Act or another person with the knowledge of the said person within twelve months before the filing date of the first patent application or registration application of a utility model containing the invention in the Republic of Estonia or abroad. The request shall be filed together with the patent application or not later than two months before the publication of the patent application pursuant to § 24. If another person acquired the information unlawfully or the information was published unlawfully or without the knowledge of the person who has the right to apply for the patent, the request may be filed in the course of the examination of the patent application or in case the patent is contested. Evidence supporting the request shall be appended to the request.

(4) 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.

(5) An invention shall be considered as susceptible to industrial application if it can be manufactured or used in economy.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 9. Unity of invention

(1) Patent protection for only one invention or a group of inventions so linked as to form a single general inventive concept can be applied for in a patent application.

(2) If a patent application contains several inventions, the applicant may separate the

inventions from the patent application during the processing of the patent application and file separate patent applications pursuant to §§ 19 and 20 of this Act. The filing date of the initial patent application shall be deemed to be the filing date of any separate patent applications filed for separated inventions (hereinafter separated patent application) if the invention corresponds to the subject matter of the invention as disclosed in the initial patent application. Separated patent applications may be filed up to six months after termination of the processing of the patent application pursuant to § 28 or completion of the processing of the patent application pursuant to § 31.

(3) If patent claims contain several inventions not forming a single general inventive concept, the applicant shall separate the inventions which violate the requirement of unity from the patent application at the request of the Patent Office within the term set by the Patent Office. Subsection (2) of this section applies to separated inventions.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 10. Scope of patent protection and patent claims

(1) The scope and content of patent protection shall be determined by the wording of patent claims. The wording of patent claims shall be interpreted based on the level of knowledge of a person skilled in the art at the time of filing the patent application. The description, drawings and other illustrative material shall be used to interpret the wording of patent claims.

(2) Patent claims shall define the subject matter of the invention, for which patent protection is applied, in words in a clear, concise and short manner. In patent claims, the subject matter of an invention shall be presented as a set of essential features of the invention. Patent claims consist of one or several claims.

(3) Patent claims consist of independent and dependent claims. Patent claims shall not contain more than one independent claim with regard to one invention, unless:

1) the invention consists of several products grouped together, or

2) the apparatus or product is used for various purposes, or

3) such alternative solutions to the technical problem exist as not to allow the subject-matter of the invention to be covered by a single claim.

(4) Where the derogations referred to in subsection (3) of this section apply, the requirement of unity of invention must be met.

(5) The abstract of the subject matter of an invention has no legal effect upon disclosing the subject matter of the invention or determining the scope of patent protection. The abstract shall merely serve for use upon disclosing technical information concerning the invention.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 11. Priority

(1) Priority is the preferential right of the person who files the first patent application or registration application of a utility model or the legal successor of such person to apply for patent protection for an invention. The filing date of the first patent application or registration

application of a utility model shall be considered to be the date of priority.

(2) If a patent application is filed with the Patent Office within twelve months after the filing date of the first patent application or registration application of a utility model and priority is claimed, priority may be established:

1) on the basis of the filing date of the first patent application or registration application of a utility model in any State party to the Paris Convention of the Protection of Industrial Property (RT II 1994, 4/5, 19) or member of the World Trade Organisation;

2) on the basis of the filing date of the first patent application or registration application of a utility model in a state which is not a State party to the Paris Convention for the Protection of Industrial Property or in a state which is not member of the World Trade Organisation if such state guarantees equivalent conditions for first patent applications and registration applications of utility models filed in the Republic of Estonia.

(3) Priority for a patent application filed on the basis of corrections and amendments to an earlier patent application which alter the subject matter of the invention may be established, if priority is claimed, based on the filing date of such corrections and amendments with the Patent Office.

(4) Priority for a patent application which is separated from an earlier patent application pursuant to subsection 9 (2) or (3) of this Act may be established, if priority is claimed, on the basis of the date of priority of the earlier patent application.

(5) If priority is claimed, priority may be established for a patent application filed with the Patent Office within twelve months by the same applicant for the same invention on the basis of the filing date of an earlier patent application or registration application of a utility model, provided that the earlier patent application or registration application of a utility model has not been published and priority has not been claimed on the basis thereof for some other patent application or registration application of a utility model. If an earlier patent application is being processed, the earlier patent application is deemed to be withdrawn.

(6) If priority is claimed, priority may be established on the basis of the filing dates of several patent applications or registration applications of utility models filed earlier. In the case of several patent applications or registration applications of utility models filed earlier, the twelve-month term specified in subsection (2) or (5) of this section shall be calculated as of the earliest date of priority.

(61) If priority is claimed, priority for a patent application filed with the Patent Office after expiry of the twelve-month term specified in subsection (2) or (5) of this section may be established on the basis of the filing date of a first patent application or registration application of a utility model pursuant to subsection (2) or (5) of this section if:

1) the reasons for the failure to comply with the abovementioned term are appended to the priority claim;

2) the reasons stated pursuant to clause 1) of this subsection prove that the failure to file the application within the term was unintentional;

3) the patent application was submitted within two months from the date on which the abovementioned term expired.

(7) [Repealed - RT I 2003, 18, 106 - entered into force 01.04.2003]

[RT I 2003, 18, 106 - entered into force 01.04.2003]

Chapter III. Right to Apply for Patent ➡

§ 12. Right to patent

(1) The right to apply for a patent and to become the proprietor of a patent is vested in the author of the invention and a legal successor of the author.

(2) If an invention is created in the performance of contractual obligations or duties of employment, the right to apply for a patent and to become the proprietor of the patent is vested in the author or other person pursuant to the contract or employment contract.

§ 13. Author of invention

(1) The author of an invention (hereinafter author) is a natural person who has created an invention as a result of his or her inventing activities.

(2) If an invention is created as a result of the joint inventing activities of several natural persons, such persons are joint authors.

(3) In the case of joint authorship, all rights arising from the authorship are exercised by the authors jointly, unless they have entered into a written agreement which prescribes otherwise.

(4) If two or more persons apply for a patent regarding the same invention independently of each other and different natural persons are indicated as the author, the natural person who is indicated as the author in the patent application which has been filed earlier or which has an earlier date of priority is deemed to be the author provided that such patent application has not been withdrawn prior to publication pursuant to this Act or the Patent Office has not rejected the patent application or deemed the patent application to be withdrawn.

(5) In the case of patent applications regarding the same invention filed on the same date or bearing the same date of priority, the natural persons indicated as the authors in these patent applications are deemed to be the authors upon the grant of the patent.

(6) Authorship is inalienable and unspecified in term.

(7) An author has the right to a pseudonym and he or she may:

- 1) request the disclosure of his or her name as the author;
- 2) prohibit the disclosure of his or her name as the author;
- 3) revoke at any time the prohibition to disclose his or her name.

(8) An author has the right to receive fair proceeds from the profit received from the invention.

(9) The proprietary rights of an author are transferable and inheritable.

§ 131. Representation in performance of procedures related to patent protection

(1) Procedures related to patent protection shall be performed in the Patent Office or Industrial Property Committee (hereinafter committee) by the interested person or a patent agent who has been expressly authorised by the interested person and who has been awarded the qualification of a patent agent for operation in the area of inventions pursuant to the Patent Agents Act (RT I 2001, 27, 151; 93, 565; 2002, 53, 336). An interested person or patent agent may involve, at own expense, an interpreter or adviser without the right of representation in oral proceedings in the Patent Office or the committee.

(2) A person whose residence or seat is not located in the Republic of Estonia shall authorise a patent agent as the person's representative for the performance of procedures related to patent protection in the Patent Office and the committee, except filing of a patent application, filing of a request for acceptance of an international application for national processing specified in subsection 33 (1) of this Act and payment of all the state fees specified in this Act.

(3) If procedures related to patent protection are performed in the Patent Office or the committee by several persons together, they may authorise a patent agent as their representative or choose a representative from among themselves (hereinafter joint representative) whose residence or seat is in the Republic of Estonia. A joint representative has the right to perform all procedures related to the processing of a patent application in the name of the applicants, except transfer of the patent application.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

Chapter IV. Exclusive Right of Proprietor of Patent ➡

§ 14. Proprietor of patent

(1) The proprietor of a patent is the person in respect of whom the last entry as the proprietor of the patent has been made in the state register of patents.

(2) The proprietor of a patent has exclusive right to the invention protected by the patent. Only the proprietor of a patent has the right to exercise rights arising from the patent and to prohibit other persons from exercising those rights.

(3) The exclusive right of the proprietor of a patent may only be restricted by this Act or the rights of other persons.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 15. Exclusive right of proprietor of patent

(1) The exclusive right of the proprietor of a patent means that during the period of validity of the patent and without the permission of the proprietor of the patent no person shall:

1) [Repealed]

2) manufacture, use, distribute, sell or offer for sale products protected by the patent or acquire (incl. by way of importation) such products for the aforementioned purposes;

3) manufacture, sell or offer for sale components which form a significant part of the product protected by the patent or acquire and export such components for the manufacture or preparation of the product, except if the components are other independent products;

4) use or offer for use to third persons the patented process;

5) use, distribute, sell or offer for sale a product manufactured according to the patented process or to acquire (including by way of importation) such products for the aforementioned purposes.

(2) In the case of products manufactured according to a patented process, the manufacture, use, distribution, sale, offering for sale or acquisition (including by way of importation) for the aforementioned purposes of a similar product without the authorisation of the proprietor of the patent is considered an infringement of the exclusive right of the proprietor of the patent unless it is proved that the similar product is manufactured according to a different process.

§ 151. Extension of exclusive right of proprietor of patent

(1) In the case of a patented biological material, the exclusive right of the proprietor of the patent shall extend to any biological material derived from that biological material through propagation or multiplication in an identical or divergent form and possessing the same characteristics.

(2) In the case of a biological material produced according to a patented process, the exclusive right of the proprietor of the patent shall extend to any biological material derived from the biological material obtained through the patented process through propagation or multiplication in an identical or divergent form and possessing the same characteristics.

(3) In the case of an invention containing genetic information, the exclusive right of the proprietor of the patent shall extend to all biological material in which the invention is incorporated and which performs its function according to the said genetic information, except the human body and parts thereof.

§ 16. Acts which do not constitute infringement of exclusive right of proprietor of patent

The following acts do not constitute infringement of the exclusive right of the proprietor of a patent:

1) the use of the patented invention on board of ships of other states (within the hull, machinery, rigging, radio-navigation equipment or other equipment) if such ships are temporarily or accidentally in the waters of the Republic of Estonia and the invention is used solely for the purposes of the ship;

2) the use of the patented invention within the construction or auxiliary equipment of aircraft or land vehicles of other countries, or in the operation of the vehicles or equipment if such vehicles are temporarily or accidentally in the Republic of Estonia;

3) the use of the patented invention in testing related to the invention itself;

4) the single preparation of a medicinal product containing the patented invention on the basis of a prescription in a pharmacy and the use of such medicinal product;

5) the private non-commercial use of the patented invention if such use does not harm the interests of the proprietor of the patent;

6) the use, distribution, sale or offer for sale in the Republic of Estonia of the patented invention by the proprietor of the patent or with the proprietor's consent;

7) the propagation or multiplication of biological material placed on the market by the proprietor of the patent or with the proprietor's consent, where the multiplication or propagation necessarily results from the application for which the biological material was marketed, provided that the biological material obtained is not subsequently used for other propagation or multiplication.

§ 17. Right of prior use

(1) A person who, prior to the filing of a patent application for an invention by another person, has, in good faith and independently of the applicant, used the same invention for industrial application in the Republic of Estonia, may continue to use the invention retaining the same general nature of application. Use is in good faith unless the user knew or should have known that the filing of a patent application for the invention was intended.

(2) The right of prior use also belongs to a person who has, in good faith, made serious preparations for the industrial application of an invention in the Republic in Estonia.

(3) The right of prior use can only be transferred to another person together with the enterprise with regard to which the right of prior use is established or in which it was intended to be used.

§ 171. Exhaustion of rights

The proprietor of a patent has no right to prohibit further use for commercial purposes of a product protected by a patent when the product has been put on the market in the territory of the Republic of Estonia or a State party to the Agreement on the European Economic Area by the proprietor of the patent or with the proprietor's consent.

§ 18. Provisional protection

(1) An invention shall be granted provisional protection as of the filing date of a patent application until the publication date of the notice of issue of the patent.

(2) Other persons who commence or continue use of an invention after the publication of a patent application prescribed in § 24 of this Act are deemed, after the publication date of the notice of issue of the patent, to infringe the exclusive right of the proprietor of the patent unless such persons have right of prior use pursuant to § 17 of this Act.

(3) Other persons who commence use of an invention during the period between the filing date of the patent application and the publication date of the patent application are not deemed to infringe the exclusive right of the proprietor of the patent unless the person knew or should have known that a patent application is filed with regard to the invention or the applicant notified the person in writing of the filing of the patent application before the publication of the patent application by the Patent Office. Other persons whom an applicant

notifies of the filing of the patent application are deemed, after the publication date of the notice of issue of the patent, to infringe the exclusive right of the proprietor of the patent as of the date of receipt of the notice concerning the filing of patent application unless such persons have the right of prior use pursuant to § 17 of this Act.

(4) The scope of provisional protection shall be determined by the terms of patent claims included in a published patent application. After the issue of a patent, the scope of provisional protection shall be specified according to the patent claims of the patent issued.

Chapter V. Patent Application and Processing Thereof ➡

§ 19. Patent application

(1) A patent application shall include the following documents:

- 1) a request for the grant of a patent which contains a request to be granted the patent, information concerning the applicant and author and the name of the invention;
- 2) a description of the invention in which the invention must be disclosed in a sufficiently clear and concise manner which enables a person skilled in the art to make the invention;
- 3) patent claims consisting of one or several claims;
- 4) drawings or other illustrative material (hereinafter drawings) referred to in the description of the invention or patent claims;
- 5) an abstract of the subject matter of the invention.

(2) The following documents shall be annexed to a patent application:

- 1) an authorisation document if the patent application is filed via a patent agent;
- 2) documents certifying the priority claim, unless a specification specified in § 201 of this Act applies;
- 3) a document certifying the deposit of a biological material, including micro-organism strain, if the subject of the invention is a biological material or the invention requires the use of a biological material and if the said biological material is not available to the public and it cannot be described in the description of the invention in a manner which would enable a person skilled in the art to make the invention.

(3) If the applicant is not the author, the applicant shall declare, in the request for the grant of a patent or another document annexed to the patent application, the legal basis of the right to apply for the patent as specified in § 12 of this Act.

(4) Detailed requirements relating to the form and contents of documents included in patent applications (hereinafter form and contents) shall be established by the Minister of Economic Affairs and Communications. The Minister of Economic Affairs and Communications shall establish:

- 1) the structure of documents and information that each structural part must contain;

- 2) the data medium on which documents must be submitted;
- 3) national and international standards applied to documents and the format of information contained therein.
- (5) Patent applications shall be filed in Estonian. The name of the invention in the request for the grant of a patent and the abstract of the subject matter of the invention shall be submitted in Estonian and English.
- (6) The Patent Office has the right to request the submission of the Estonian translation of any foreign language document included in a patent application, document annexed to a patent application or document submitted in the course of processing within a term of two months, unless a different term is provided by this Act.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 20. Filing of patent applications

- (1) Patent applications shall be filed with the Patent Office.
- (2) A state fee for the filing of a patent application shall be paid within two months as of the filing date of the patent application. The specified term for the payment of the state fee shall not be extended or restored.
- (3) If patent claims containing more than ten claims are filed, a supplementary state fee shall be paid for each claim starting with the eleventh claim.
- (4) The procedure for filing patent applications shall be established by the Minister of Economic Affairs and Communications.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 201. Correction or addition of priority claim

- (1) Priority shall be claimed upon filing of a patent application or within sixteen months from the date of priority.
- (2) Documents certifying the priority claim shall be filed together with the patent application or submitted to the Patent Office within sixteen months from the date of priority.
- (3) Documents certifying the priority claim need not be submitted if priority is claimed on the basis of a first patent application or registration application of a utility model in the Republic of Estonia.
- (4) Documents certifying the priority claim need not be submitted if priority is claimed on the basis of a first patent application or registration application of a utility model filed abroad and published in a digital database to which the Patent Office has unrestricted access free of charge.
- (5) A list of countries to which subsection (4) of this section applies shall be published in the official gazette of the Patent Office.

(6) Translations of foreign language documents certifying the priority claim shall be submitted at the request of the Patent Office pursuant to the provisions of subsection 23 (2) of this Act.

(7) A priority claim may be amended or corrected within sixteen months from the date of priority. Where the amendment or correction would cause a change in the date of priority, the sixteen-month period shall be calculated from the date of priority as so changed.

(8) A priority claim shall not be added or corrected if the patent application has been published pursuant to subsection 24 (2) of this Act or technical preparations for the publication of the patent application have been completed.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 21. Establishment and change of filing date of patent application

(1) The Patent Office shall establish as the filing date of a patent application the date on which the Patent Office has received all of the following elements in a set of documents:

1) a request for the grant of a patent in Estonian or another express indication to the effect that the documents are intended to be a patent application;

2) indications allowing the identity of the applicant to be established or allowing the applicant to be contacted by the Patent Office;

3) a document which on the face of it appears to be a description of the invention.

(2) Instead of the document referred to in clause (1) 3) of this section, the following information concerning the first patent application or registration application of a utility model with regard to the same invention may be submitted:

1) number;

2) filing date;

3) the state or international organisation where the first patent application or registration application of a utility model was filed. If the first patent application or registration application of a utility model is in a foreign language, the applicant shall submit the Estonian translation of the description of the invention and patent claims within the term set by the Patent Office but not later than within sixteen months from the filing date of the first patent application or registration application of a utility model.

(3) The Patent Office shall determine the filing date of a patent application separated pursuant to subsection 9 (2) or (3) of this Act as the filing date of the earlier patent application provided that the separated patent application is filed in compliance with the term specified in subsection 9 (2) and the set of documents received contains at least the elements of a patent application as listed in subsection (1) of this section.

(4) Where, upon review of the documents received, the Patent Office finds that an element of the patent application listed in subsection (1) of this section is missing from the set of documents, the Patent Office shall notify the person who filed the patent application accordingly and set a term for the elimination of deficiencies.

(5) The Patent Office does not have the obligation to give notice of deficiencies as specified in subsection (4) of this section if the missing element of the patent application is the information referred to in clause (1) 2) of this section. In such case, the applicant must submit all the missing elements of the patent application as specified in subsection (1) on the applicant's own initiative within two months from the date on which the initially submitted documents were received by the Patent Office.

(6) In the case specified in subsection (4) of this section, the Patent Office shall establish the date on which the applicant has eliminated all the deficiencies in the initially submitted documents as listed by the Patent Office as the filing date of the patent application and, in the case specified in subsection (5) of this section, the Patent Office shall establish the date on which the applicant submitted all the missing elements of the patent application as listed in subsection (1) on the applicant's own initiative as the filing date of the patent application.

(7) Where the Patent Office finds that a part of the description of the invention appears to be missing from the application, or that the description of the invention or patent claims refer to a drawing which appears to be missing from the application (hereinafter missing part), the Patent Office shall promptly notify the applicant thereof. If the applicant wishes to add the missing part to the patent application, the applicant, whether notified by the Patent Office or not, must file the missing part within two months from the filing date of the patent application. The Patent Office shall establish the date on which the missing part is received by the Patent Office as the new filing date of the patent application.

(8) If, within the term specified in subsection (7) of this section, the applicant gives notice to the Patent Office of declining to file the missing part or fails to file the missing part, the Patent Office shall establish the filing date of the patent application pursuant to the provisions of subsection (1) of this section.

(9) Within the two-month term specified in subsection (7) of this section, the applicant may request that the missing part be replaced by the full text of the description of the invention of the first patent application or registration application of a utility model with regard to the same invention or that a drawing be replaced by a drawing of the said first application. The request must contain the information specified in subsection (2) on the first patent application or registration application of a utility model. If the first patent application or registration application of a utility model is in a foreign language, the applicant shall submit the Estonian translation of the full text of the description of the invention or drawing to the Patent Office within sixteen months from the date of priority. In the case of such request, the Patent Office shall establish the date of receipt of the initially submitted documents at the Patent Office as the filing date of the patent application.

(10) Where both the provisions of subsection (6) and subsection (7) or (9) of this section apply to the establishment of the filing date of a patent application, the filing date of the patent application shall be the later date as established pursuant to the said provisions.

(11) The Patent Office shall not establish the filing date of a patent application if the applicant fails:

1) in the case specified in subsection (4) of this section, to eliminate any deficiencies listed in the notice of the Patent Office within the set term;

2) in the case specified in subsection (5) of this section, to file, on own initiative, all the elements of the patent application referred to in subsection (1) of this section that are missing within two months from the date of receipt of the initially submitted documents at the Patent Office.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 211. Files of patent applications and processing of patent applications, access to and release of information therefrom

(1) The files of patent applications and processing of patent applications form a structured body of data concerning patent application documents accepted for processing and information on the processing thereof. Information on a patent application and on the processing thereof is stored in the files until the processing file is closed.

(2) Access to the files of patent applications and processing of patent applications, and release of information from the files is generally prohibited. Only the name and index of the International Patent Classification of an invention, the patent application number, filing date of the patent application, priority data, the name and address of the applicant and the name of the representative of the applicant may be released from the files.

(3) Access to a file containing information on the processing of a patent application is granted to the applicant, persons who have the written consent of the applicant and persons whom the applicant has informed in writing of the filing of a patent application and has warned of the applicant's right to apply for a patent and to become the proprietor of the patent.

(4) After the publication of a patent application, all persons may have access to the patent application processing file.

(5) No information on the author is released from a patent application processing file if the author has prohibited disclosure of the author's name.

(6) A fee is charged for the release of information from the files of patent applications and processing of patent applications with the exception of the release of information to state agencies with supervisory authority or to a court. A state fee is charged for the release of information.

(7) The files of patent applications and processing of patent applications are established by the Minister of Economic Affairs and Communications.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 22. Acceptance of patent applications for processing and preliminary processing of patent applications

(1) The Patent Office shall accept a patent application for processing if the filing date of the patent application has been established pursuant to the provisions of § 21 of this Act.

(2) The Patent Office shall notify the applicant of the number and filing date of the patent application accepted for processing.

(3) The Patent Office shall refuse to accept a patent application for processing if the filing date of the patent application is not established on the bases prescribed in subsection 21 (11) of this Act.

(4) Upon refusal to accept a patent application for processing, the applicant is notified thereof in writing and the state fee is refunded to the applicant.

(5) In the course of preliminary processing, the Patent Office shall verify the following:

- 1) payment of the state fees specified in subsections 20 (2) and (3) of this Act;
- 2) existence of the documents specified in subsections 19 (1) and (2) of this Act;
- 3) existence of the translation specified in subsection 21 (2) or (9) of this Act, if said provisions apply;
- 4) compliance of the priority claim with the provisions of §§ 11 and 201 of this Act, if priority is claimed;
- 5) information on the author and compliance with the requirement to declare the legal basis of the right to apply for the patent referred to in subsection 19 (3) of this Act if the applicant is not the author;
- 6) the right of the patent agent to operate in the area of inventions, if the patent application is filed via a patent agent;
- 7) compliance of the patent application documents with the requirements relating to form and contents provided for in subsection 19 (4) of this Act.

(6) If the state fee prescribed in subsection 20 (2) of this Act is not paid in the prescribed amount within two months as of the filing date of the patent application, the Patent Office shall reject the patent application. If patent claims are missing or not in compliance with the requirements relating to form and contents or the supplementary state fee specified in subsection 20 (3) is paid in an amount less than the prescribed amount, the Patent Office shall set a due date for payment of the missing part of the state fee. In the case of a patent application concerning an invention separated on the basis of subsection 9 (2) or (3) of this Act, the Patent Office shall set a due date for payment of the state fees for the years of validity if the term specified in subsection 42 (2) or (3) of this Act has expired by the filing date of the patent application.

(7) If, by verification specified in subsection (5) of this section, it is ascertained that a document is missing from the patent application or deficiencies relating to the form or content of the documents exist which hinder the commencement of examination or other circumstances which hinder the examination exist, the Patent Office shall notify the applicant thereof in writing and set a due date for the elimination of deficiencies or provision of explanations.

(8) The Patent Office shall commence examination of a patent application if no circumstances hindering the publication of the patent application or commencement of the examination have been ascertained as a result of the verification prescribed by subsection (5) of this section or such circumstances have been eliminated by the due date prescribed in the case provided for in subsection (7) of this section.

(9) The Patent Office shall make a decision to reject the patent application if circumstances hindering the publication of the patent application or commencement of the examination have not been eliminated by the due date prescribed in the case provided for in subsection (7) of this section. The Patent Office shall notify an applicant in writing of a decision to reject the patent application.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 23. Examination of patent applications

(1) During an examination, the Patent Office shall verify the compliance of an invention with the criteria of patentability provided by § 8 of this Act.

(2) The Patent Office may request from an applicant oral or written explanations and correction or amendment of the patent claims, description of the invention, drawings and the abstract of the subject matter of the invention or translations of foreign language documents submitted by the applicant. The Patent Office shall set a term for the provision of explanations or submission of corrections, amendments and translations.

(3) The Patent Office has the right to request from an applicant copies of decisions of patent offices of other countries regarding the applicant's analogous patent applications and to exchange information regarding the patent application with patent offices of other countries.

(4) If the Patent Office finds that the subject of the invention can be protected by a patent pursuant to the provisions of §§ 6 and 7 of this Act and the subject matter of the invention as expressed in the patent claims complies, when compared to the state of the art, with the criteria of patentability established in § 8 of this Act and that the form and contents of the patent application documents comply with the requirements relating to form and contents established on the basis of subsection 19 (4) of this Act, the Patent Office shall terminate the examination of the patent application, make a decision to issue the patent and shall notify the applicant thereof in writing.

(5) If the Patent Office finds that the subject of the invention cannot be protected by a patent pursuant to the provisions of §§ 6 and 7 of this Act or the subject matter of the invention as expressed in the patent claims does not comply, when compared to the state of the art, with the criteria of patentability established in § 8 of this Act or the applicant fails to separate an invention which violates the requirement of unity from the patent application by the due date set pursuant to subsection 9 (3) of this Act or that the form or contents of the patent application documents do not comply with the requirements relating to form and contents established on the basis of subsection 19 (2) of this Act or if the applicant fails to make the corrections or amendments or provide the explanations or submit the translations requested pursuant to subsection (2) or to submit the copies of decisions requested pursuant to subsection (3) of this section, the Patent Office shall terminate the examination of the patent application, make a decision to reject the patent application and shall notify the applicant thereof in writing.

(6) Any observations and opinions on a patent application submitted by a third person in the course of examination shall be communicated to the applicant who may comment on them. Third persons shall not be involved in processing.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 24. Publication of patent applications

(1) For the purposes of this Act, "publication of a patent application" means the publication of patent application documents specified in clauses 19 (1) 2)-5).

(2) The Patent Office shall publish a patent application not earlier than eighteen months after the filing date or, if priority is claimed, the date of priority of the patent application.

(3) At the request of the applicant, a patent application shall be published before expiry of

the term specified in subsection (2) of this section.

(4) A patent application shall not be published if:

- 1) the patent application is withdrawn or deemed to be withdrawn;
- 2) the patent application is rejected;
- 3) the patent application cannot be published due to formal or substantive deficiencies in the patent application documents.

(5) The applicant is notified of the publication of the patent application in writing.

(6) Notices of the publication of patent applications are published in the official gazette of the Patent Office.

(7) The publication date of the notice specified in subsection (6) of this section is deemed to be the publication date of the patent application.

(8) The procedure for the publication of patent applications shall be established by the Minister of Economic Affairs and Communications. For the publication of a patent application, a period of technical preparations lasting up to one month may be established and, during that period, no corrections or additions shall be made to the patent application, the patent application shall not be withdrawn and acts related to the transfer of rights shall be suspended.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 25. Correction and amendment of patent application

(1) An applicant may correct and amend a patent application during processing such that no alterations are made to the subject matter of the invention which was disclosed in the patent application on the filing date of the patent application.

(2) Corrections and amendments are deemed to alter the subject matter of an invention if they contain essential features of the invention which were not included in the description of the invention, drawings or other illustrative material on the filing date of the patent application.

(3) In the case of corrections and amendments which alter the subject matter of an invention, the Patent Office shall make a decision to reject such amendments and shall notify the applicant thereof in writing.

(4) After the publication of a patent application made pursuant to § 24 of this Act, the applicant shall not make such corrections or amendments which extend the scope of patent protection.

(5) After the Patent Office has made a decision pursuant to subsection 23 (5) or (6) of this Act, the applicant may correct and amend the patent application once within two months as of the date of the decision and shall pay a state fee therefor. The state fee shall not be paid if obvious spelling and calculation mistakes are corrected. The Patent Office has the right to make a new decision on the basis of the corrections and amendments submitted.

(6) During processing, the Patent Office may, without obtaining the approval of the applicant, only edit the documents of a patent application. The abstract of the subject matter of an invention may be amended without obtaining the approval of the applicant.

§ 251. Setting and extension of time limits

(1) In the cases provided by this Act, the Patent Office may set two-month or four-month periods as time limits. In certain special circumstances, the Patent Office may set a time limit of six months.

(2) In justified cases, an applicant has the right to request the extension of a term set by the Patent Office within the time limits provided by subsection (1) of this section. The application for a period of grace shall be filed with the Patent Office before the due date. The decision of the Patent Office regarding the grant of a period of grace is final.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 26. Withdrawal of patent applications

(1) An applicant may file a request for the withdrawal of a patent application and may withdraw a patent application which is being processed. Patent application documents are not returned.

(2) If several persons apply for a patent, a request for the withdrawal of the patent application shall be filed with the consent of all such persons.

(3) The Patent Office deems a patent application to be withdrawn:

1) if the applicant fails to comply, by the specified due date, with a request to eliminate deficiencies or provide explanations submitted by the Patent Office in the course of preliminary processing pursuant to subsection 22 (7) or fails to submit a request for the resumption of processing of the patent application pursuant to subsection 27 (3) of this Act;

2) if the applicant fails to comply, by the specified due date, with a request to provide explanations or submit any corrections, additions or translations made by the Patent Office in the course of examination pursuant to subsection 23 (2) or fails to submit a request for the resumption of processing of the patent application pursuant to subsection 27 (3) of this Act;

3) if the applicant fails to pay the state fee on time;

4) in the case specified in subsection 11 (5) of this Act.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 27. Suspension and resumption of processing of patent application

(1) Where an applicant fails to comply with a time limit fixed by the Patent Office, pursuant to this Act, for the performance of an act, the Patent Office shall suspend the processing of the patent application and notify the applicant thereof in writing.

(2) If an action is filed on the basis of subsection 48 (1) or 49 (1) of this Act, processing of

the patent application shall be suspended until entry into force of a court judgment.

(3) The processing of a patent application suspended pursuant to subsection (1) of this section shall be resumed if the applicant files a request for the resumption of processing of the patent application, proves that the time limit was ignored unintentionally, performs the prescribed act and pays the state fee within two months from the date on which notice was given of the suspension of processing of the patent application or, if notice of suspension was not received, within six months from the due date for the act which was not performed.

(4) Suspension of the processing of a patent application does not grant the right to postpone or restore terms for the payment of the state fee for a year of validity if the state fee was not paid by the due date.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 28. Termination of processing of patent application

(1) The Patent Office shall terminate the processing of a patent application which is withdrawn or deemed to be withdrawn.

(2) The applicant shall be notified of the termination of the processing of a patent application in writing.

§ 29. Resumption of processing of patent application

(1) An applicant may request resumption of the processing of a patent application if the Patent Office has terminated the processing of the patent application by having deemed the patent application to be withdrawn pursuant to clause 26 (3) 1), 2) or 3) of this Act, provided that the failure to perform the acts specified in such provisions occurred due to force majeure or some other impediment independent of the applicant or the patent agent representing the applicant.

(2) The Patent Office shall resume the processing of a patent application if the applicant files a request for the resumption of processing, proves the existence of an impediment and performs the prescribed acts within two months after the impediment ceases to exist, and pays a state fee.

(3) A request for resumption of the processing of a patent application may be filed within one year after the due date for the act which was not performed.

(4) The provisions of subsections (1), (2) and (3) of this section do not apply to the terms specified in subsections 9 (2), 20 (2), 21 (2), (7) and (9), 33 (6), 35 (6) and § 42 of this Act.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 291. Applicant's right to submit objections

If the Patent Office finds that facts which have become evident in the course of preliminary processing or examination of a patent application will, pursuant to the provisions of this Act, result in the rejection of the patent application, the Patent Office must, before making a decision to reject the patent application, notify the applicant of the intended decision and facts leading thereto and give the applicant at least one opportunity to submit oral or written objections.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 30. Appeal against decisions of Patent Office during processing of patent application

(1) An applicant may file an appeal with the committee or an administrative court against a decision of the Patent Office.

(2) An applicant may file an appeal with the committee within two months as of the date on which the decision is made and shall pay a state fee.

(3) The committee has the right, by a decision, to:

1) dismiss an appeal and not to amend the decision of the Patent Office, or

2) make a proposal to the Patent Office to revoke the decision thereof and, taking into account the facts specified in the decision of the committee, require the Patent Office to resume processing.

(4) The state fee is refunded upon grant of appeal.

(5) If an appeal is partially granted, the committee shall determine the amount of state fee refunded.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 31. Completion of processing of patent application

The processing of a patent application is completed by the issue of a patent or by the rejection of the patent application.

Chapter VI. International application ➡

§ 32. Definition of international application

(1) For the purposes of this Act, "international application" is an international application filed on the basis of the Patent Cooperation Treaty (RT II 1994, 6/7, 21) entered into on 19 June 1970 in Washington (hereinafter Patent Cooperation Treaty).

(2) Pursuant to the definition of Article 2 of the Patent Cooperation Treaty, the Patent Office is the receiving office, the designated office and the elected office.

(3) The Patent Office is the receiving office for international applications of Estonian citizens or of persons whose residence or seat is in the Republic of Estonia.

(4) An international application shall be prepared pursuant to the Patent Cooperation Treaty and the implementing regulations and administrative instructions thereof, and filed with the Patent Office, which is the receiving office, in English or German; a state fee and fees prescribed by the Patent Cooperation Treaty shall be paid.

(5) The Patent Office is the designated or elected office for such international applications

in which the Republic of Estonia is indicated as the designated or elected state.

(6) International applications in which the Republic of Estonia is indicated as the designated state are deemed equal to patent applications filed pursuant to §§ 19 and 20 of this Act.

(7) An international application in which the Republic of Estonia is indicated as the designated state is deemed to be filed with the Patent Office on the international filing date which is determined by the receiving office, as specified in the Patent Cooperation Treaty.

(71) An invention described in a published international application in which the Republic of Estonia is indicated as the designated state shall be granted provisional protection pursuant to § 18 of this Act as of the date on which the Patent Office publishes the Estonian translation of the international application filed in accordance with subsection 33 (1) of this section or, if the applicant makes a request for provisional protection to take effect earlier, the date on which the applicant forwards the Estonian translation of the patent claims of the published international application to a person who uses the invention in the Republic of Estonia or the date on which the Patent Office publishes the said translation, if the translation has been forwarded to the Patent Office and the state fee payable for the publication of the translation has been paid.

(8) The Patent Office shall examine such international registration applications in which the Republic of Estonia is indicated as the designated state.

(9) The procedure for the payment of fees prescribed by the Patent Cooperation Treaty shall be established by the Minister of Economic Affairs and Communications.

(10) The procedure for filing international applications with the Patent Office shall be established by the Minister of Economic Affairs and Communications.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 33. Specifications of processing of international applications

(1) For an international application to be accepted for national processing, an applicant shall file a corresponding request together with the Estonian translation of the international application with the Patent Office and pay a state fee not later than within thirty-one months as of the date of priority. In the case provided for in subsection 42 (9) of this Act, the applicant must pay the state fees for the first, second and third years of validity within two months as of the filing date of the said request.

(2) [Repealed - RT I 2003, 18, 106 - entered into force 01.04.2003]

(3) In justified cases, an applicant may be granted an additional period of two months for filing the translation of an international application specified in subsection (1) of this section if the applicant pays an additional state fee upon filing the translation.

(4) [Repealed - RT I 2003, 18, 106 - entered into force 01.04.2003]

(5) [Repealed - RT I 2003, 18, 106 - entered into force 01.04.2003]

(6) An international application shall lose the effect specified in subsections 32 (6) and (7) of this Act if:

- 1) the provisions of Article 24 (1) (i) and (ii) of the Patent Cooperation Treaty apply;
- 2) the applicant fails to comply with the requirements provided for in subsection (1) or (3) of this section;
- 3) the applicant fails to comply with the requirements for the authorisation of a representative specified in § 131 of this Act.

(7) The Patent Office has no right to request that an applicant file examination results of patent offices of the states designated in an international application if the applicant has chosen the Republic of Estonia to be the state which uses the results of the international preliminary examination.

(8) If international preliminary examination or international search is not performed with respect to a part of an international application on the grounds that the application is not in compliance with the requirement of unity of invention and the applicant has not paid the fee prescribed by the Patent Cooperation Treaty for additional international search or international preliminary examination, the Patent Office shall verify the correctness of the decision of the International Searching Authority or the International Preliminary Examining Authority not to perform international search or preliminary examination with respect to the part of the patent application. If the decision is correct, such parts of the international application which are not in compliance with the requirement of unity of invention are deemed to be withdrawn. Otherwise, the Patent Office shall continue the processing of the international application in full. The Patent Office shall notify the applicant of its decision in writing.

(9) The Patent Office shall apply the provisions of subsection 9 (2) of this Act to such parts of an international application which violate the unity of the invention if the applicant files a corresponding request within two months as of the date of the decision of the Patent Office specified in subsection (8) of this section.

(10) If the receiving office refuses to accept an international filing date or reports that an international application is deemed to be withdrawn, or if the International Bureau of the World Intellectual Property Organization (hereinafter International Bureau) has made a decision pursuant to Article 12 (3) of the Patent Cooperation Treaty, or if the receiving office reports that the designation of the Republic of Estonia is deemed to be withdrawn, the applicant may, within two months after receipt of the corresponding report or decision, request the review of the international application in the Republic of Estonia and request that the International Bureau send a copy of the international application to the Patent Office. The applicant shall file a translation of the international application with the Patent Office and, in the cases prescribed, information concerning the patent agent, and pay a state fee during the term determined by the Patent Office. The Patent Office shall verify the correctness of the decision of the receiving office or the International Bureau and notify the applicant of the results. If the decision of the receiving office or the International Bureau is incorrect, the application shall be reviewed as an international application.

(11) If the processing of an international application is terminated on the grounds that an applicant has failed to perform an act prescribed by the receiving office, the International Searching Authority, the International Preliminary Examining Authority or the International Bureau or an act provided for in subsection (1) of this section on time due to force majeure or some other impediment independent of the applicant, the Patent Office shall restore the processing of the international application in the Republic of Estonia, provided that the applicant adheres to the provisions of subsections 29 (2) and (3) of this Act.

[Repealed - RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 331. Files of international (patent) applications and processing of international applications, access to and release of information therefrom

(1) The files of international applications and processing of international applications form a structured body of data concerning international application documents filed with the Patent Office as the receiving office pursuant to Article 2 of the Patent Cooperation Treaty and information on the processing thereof. Information on an international application and on the processing thereof is stored in the files until the processing file is closed.

(2) Access to the files of international applications and processing of international applications and release of information from the files prior to the publication of the international application pursuant to Article 21 of the Patent Cooperation Treaty is prohibited.

(3) After an international application is published pursuant to Article 21 of the Patent Cooperation Treaty, all persons may have access to the international application file.

(4) A fee is charged for the release of information from the files of international applications and processing of international applications with the exception of the release of information to state agencies with supervisory authority or to a court. A state fee is charged for the release of information.

(5) The files of international applications and processing of international applications shall be established by the Minister of Economic Affairs and Communications.

[Repealed - RT I 2003, 18, 106 - entered into force 01.04.2003]

Chapter VII. State Register of Patents and Issue of Patent ➡

§ 34. State register of patents

(1) The state register of patents (hereinafter register) is maintained concerning inventions which are deemed to be in compliance with the criteria of patentability.

(2) The Patent Office is the chief and authorised processor of the register.

(3) The registry secretary arranges maintenance of the register and makes entries in the register.

(4) The register is maintained as an entry book on paper or as a computer database with the entries stored as print-outs.

(5) The language of the register is Estonian. Documents in foreign languages shall be submitted to the authorised processor together with an Estonian translation.

(6) The register comprises the entry book, patent application processing file and registry file. The entry book consists of registry cards which are stored in the volumes of the entry book.

(7) The expenditure for maintenance of the register is covered from the state budget through the budget of the Patent Office.

(8) The statutes for maintenance of the register shall be approved by the Government of the Republic.

§ 35. Registration of invention in register

(1) An invention shall be registered in the register by entry of registration data (hereinafter registration) in the entry book on the basis of a decision to issue a patent made by the Patent Office, the committee or a court.

(2) Registration data are:

- 1) the registration number;
- 2) the registration date;
- 3) the name of the invention;
- 4) the index of the international patent classification;
- 5) the given name, surname and address of the author of the invention;
- 6) the given name, surname and the address and country code of the residence or seat of the enterprise of the proprietor of the patent, in the case of a legal person, the name, address of the seat and the country code;
- 7) the date of beginning of the period of validity of the patent;
- 8) the date of expiry of the patent;
- 9) in the case of a patent agent, the given name and surname of the patent agent;
- 10) in the case of a joint representative, the given name and surname of the joint representative, in the case of a joint representative who is a legal person, the name of the legal person;
- 11) the patent application number;
- 12) the filing date of the patent application;
- 13) priority data (date of priority, country, application number);
- 14) the number and filing date of an earlier patent application from which the patent application is separated;
- 15) number and filing date of an earlier, continued patent application;
- 16) the filing date of corrections and amendments to an earlier patent application which alter the subject matter of the invention;
- 17) international application or European patent application data;

- 18) publication date of the patent application;
 - 19) the date of disclosure of information specified in subsection 8 (3) of this Act;
 - 20) data concerning the deposit of the biotechnological material, including micro-organism strain;
 - 21) data concerning payment of the state fee paid in respect of the year of continued validity of the patent application;
 - 22) patent claims;
 - 23) the description of the invention;
 - 24) drawings or other illustrative material;
 - 25) data concerning the supplementary protection of the medicinal product;
 - 26) data concerning the supplementary protection of the plant protection product.
- (3) Patent claims, description of the invention and the drawings or other illustrative material shall be kept in the registry file.
- (4) The applicant specified in a decision to issue a patent is entered in the register as the proprietor of the patent.
- (5) Registrations are numbered in the order in which the inventions are registered starting from number 02932 as a continuation of the registry numeration which was discontinued in 1940.
- (6) For an invention to be registered in the register, the applicant shall pay a state fee within three months as of the date on which the decision specified in subsection (1) of this section is made. If the state fee is not paid within the prescribed term, the patent application is deemed to be withdrawn.
- (7) Registration data shall be entered in the register within three months as of the date of payment of a state fee specified in subsection (6) of this section.
- (8) The Patent Office shall publish a notice of the issue of a patent in the official gazette of the Patent Office. The publication date of the notice of the issue of a patent shall be entered in the entry book.
- (9) A registration shall enter into force on the publication date of a notice of the issue of a patent in the official gazette of the Patent Office.

[Repealed - RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 351. Access to and release of data from register

- (1) The register is public. Everyone has the right to examine the processing file of a patent application, the registry file and entry book and to obtain copies thereof.

(2) No information is released from the register concerning an author if the author has prohibited disclosure of the author's name.

(21) Information containing a business secret not subject to disclosure shall not be released from the register if the applicant for supplementary protection defines the business secret pursuant to subsection 395 (6) of this Act.

(3) Fees are charged for the release of information from the register with the exception of release of information to state agencies with supervisory authority or to a court. A state fee is charged for the release of information.

§ 352. Maintenance and storage of register

(1) The register is maintained in the offices of the Patent Office, and it is prohibited to remove the register from the offices.

(2) The register is permanently stored in the Patent Office archives.

§ 353. Liability of chief processor

Damage arising from the unlawful actions of the chief processor is compensated for by the state.

§ 354. Patent specification

(1) A patent specification contains the description of the invention, patent claims, drawings or other illustrative material, an abstract of the subject matter of the invention and the following information:

- 1) the name of the agency which issued the patent specification;
- 2) the name and number of the document;
- 3) the name of the invention;
- 4) the index of the international patent classification;
- 5) the given name, surname and address of the author of the invention;
- 6) the given name, surname and the address and country code of the residence or seat of the enterprise of the proprietor of the patent, in the case of a legal person, the name, address of the seat and the country code;
- 7) in the case of a patent agent, given name, surname and address of the patent agent;
- 8) in the case of a joint representative, the given name and surname of the joint representative, in the case of a joint representative who is a legal person, the name of the legal person;
- 9) the number and filing date of the patent application;
- 10) priority data;

- 11) international application or European patent application data;
 - 12) data concerning the deposit of the biological material, including micro-organism strain;
 - 13) publication date of the patent application;
 - 14) publication date of the patent specification;
 - 15) the date of beginning of the period of validity of the patent.
- (2) After the entry of registration data in the register, the Patent Office prepares the patent specification.
 - (3) The patent specification shall be kept in the registry file.
 - (4) A patent specification shall be published on the publication date of the notice of issue of the patent.
 - (5) Requirements for the format and procedure for the completion of patent specifications shall be established by the Minister of Economic Affairs and Communications.

[Repealed - RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 36. Letters patent

- (1) The letters patent is a document which certifies the registration and the exclusive right of the proprietor of a patent to an invention.
 - (2) A letters patent consists of a certificate and a patent specification.
 - (3) A certificate contains the following:
 - 1) the name of the country - the Republic of Estonia;
 - 2) the coat of arms of the country - small national coat of arms of Estonia ;
 - 3) the number of the letters patent;
 - 4) the text "The patent is issued on the basis of § 5 of the Patents Act which entered into force 23 May 1994. A patent shall be valid for twenty years as of the filing date of the patent application. A state fee shall be paid each year for the continued validity of the patent. The letters patent certifies the registration and the exclusive right of the proprietor of the patent to the invention.";
 - 5) information on issuing agency (name and location of the agency, title, name and signature of the head of the agency, seal of the agency);
 - 6) the date of signing the letters patent.
- (4) The date on which a letters patent is signed by the head of the agency which issues the document is deemed to be the date of issue of the letters patent. The date of issue of a

letters patent is entered in the entry book.

(5) The registration number is also the number of the letters patent.

(6) The Patent Office shall issue a letters patent to the proprietor of a patent within one month as of the publication date of the notice of issue of the patent.

(7) Only one letters patent is issued regardless of the number of proprietors of a patent.

(8) A duplicate of a letters patent may be issued on the basis of a request from the proprietor of the patent. A duplicate shall be issued within one month after the date of receipt of a request and a document certifying payment of the state fee at the Patent Office. A notice of the issue of a duplicate is published in the official gazette of the Patent Office.

(9) The requirements for the format and procedure for the completion and issue of letters patents shall be established by the Minister of Economic Affairs and Communications.

[Repealed - RT I 2003, 18, 106 - entered into force 01.04.2003]

Chapter VIII. Validity of Patents ➡

§ 37. Term of validity of patents

(1) A patent shall be valid for twenty years as of the filing date of the patent application.

(2) A state fee shall be paid each year for the continued validity of a patent application and patent. The filing date of a patent application is deemed to be the beginning of the year of validity.

§ 38. Premature termination of validity of patent

(1) A patent becomes prematurely invalid if:

1) a state fee is not paid for the year of validity;

2) the proprietor of the patent files a request for termination of the validity of the patent;

3) a legal person which is the proprietor of a patent is liquidated, or its activities are terminated and the patent rights have not been transferred.

(2) The Patent Office shall make an entry in the register concerning the premature termination of the validity of a patent and shall publish a notice thereof in the official gazette of the Patent Office.

§ 39. Amendments to patents

(1) The proprietor of a patent may restrict the scope of patent protection by amending patent claims and correct any obvious spelling and calculation mistakes in the patent specification the during the entire period of validity of the patent. A request for making amendments and new patent claims and, if necessary, new description of the invention

shall be filed with the Patent Office and a state fee shall be paid. The Patent Office shall correct its own mistakes, on its own initiative or upon request from the proprietor of a patent, for no fee.

(2) The proprietor of a patent may request the making of such amendments to the patent which do not alter the subject matter of the invention which was disclosed in the patent application on the filing date of the patent application.

(3) Amendments have retroactive effect.

(4) The Patent Office shall publish a notice of making amendments to a patent in the official gazette of the Patent Office. If patent claims are amended, the new patent specification shall be published.

(5) During proceedings relating to the contestation of a patent in the committee or a court, the proprietor of the patent cannot file a request for making amendments to the patent with the Patent Office.

(6) The proprietor of a patent may file a request with the Patent Office for the making of amendments to correct obvious spelling mistakes and calculation errors which restrict the scope of patent protection within two years after the publication of the notice of issue of the patent.

(7) The extension of the scope of patent protection provided for in subsection (6) of this section shall not restrict the rights of persons who had, prior to the publication of the notice concerning the making of amendments, taken into consideration the initial scope of patent protection in their economic or professional activities.

[Repealed - RT I 2003, 18, 106 - entered into force 01.04.2003]

Chapter VIII1. Supplementary Protection of Medicinal products and Plant Protection Products which Contain Active Substances Protected by Patents ➡

§ 391. Definition of medicinal product

For the purposes of this Act, "medicinal product" means a product which contains at least one active substance protected by a patent and which is used for:

- 1) treating or preventing disease in human beings or animals;
- 2) making a medical diagnosis of human beings or animals;
- 3) restoring, correcting or modifying physiological functions in humans or in animals.

§ 392. Definition of plant protection product

(1) For the purposes of this Act, "plant protection product" means a product which contains at least one active substance protected by a patent and which is used for:

- 1) protecting plants or parts of plants, including fresh fruits and seeds, against harmful

organisms or preventing the action of such organisms;

2) protecting plant products which have undergone simple preparation (milling, drying, pressing and other methods of simple preparation) against harmful organisms or preventing the action of such organisms;

3) influencing the life processes of plants or parts of plants, other than as nutrients;

4) preserving plant products which have undergone simple preparation;

5) destroying undesirable plants;

6) destroying undesirable parts of plants or checking and preventing undesirable growth of plants.

(2) For the purposes of this Act, "active substance of plant protection product" means the following, if they have action against harmful organisms or on plants, parts of plants or plant products:

1) chemical elements and their compounds, as they occur naturally or by manufacture, including any impurity inevitably resulting from the manufacturing process;

2) micro-organisms.

§ 393. Definition of basic patent

For the purposes of this Act, "basic patent" means a patent which protects the active substance of a medicinal product or a plant protection product, a combination of active substances, a process to obtain an active substance or an application of an active substance.

§ 394. Grant of supplementary protection

(1) A medicinal product or a plant protection product is granted supplementary protection by extending the validity of rights arising from the registration of an invention protected by a basic patent at the end of the term of validity of the basic patent.

(2) Supplementary protection is granted if:

1) the basic patent is valid on the filing date of the application for supplementary protection;

2) the medicinal product is registered pursuant to § 11 of the Medicinal Products Act (RT I 1996, 3, 56; 49, 954; 1997, 93, 1564; 1998, 36/37, 554; 1999, 58, 608)

3) the plant protection product is registered pursuant to subsection 12 (1) of the Plant Protection Act (RT I 1994, 28, 427; 1996, 49, 953; 1998, 13, 163; 97, 1519);

4) the registration of the medicinal product or plant protection product specified in clause 2) or 3) of this subsection is the first registration thereof and has not been deleted;

5) the same medicinal product or plant protection product has not been granted supplementary protection before.

(3) The same medicinal product or plant protection product shall be granted supplementary protection only on the basis of one patent.

(4) Several different medicinal products or plant protection products may be granted supplementary protection on the basis of the same patent.

(5) Supplementary protection shall confer the same rights as conferred by the basic patent and shall be subject to the same limitations and the same obligations.

(6) Extension of the validity of rights arising from the registration of an invention at the end of the term of validity of the basic patent shall be registered in the state register of patent.

(7) Supplementary protection data shall be entered in the entry book.

(8) Supplementary protection data consist of:

- 1) the number of the supplementary protection application;
- 2) the filing date of the supplementary protection application;
- 3) the number and date of issue of the document certifying registration of the medicinal product or plant protection product;
- 4) the date of registration of the medicinal product or plant protection product;
- 5) information regarding the identity of the product specified in the document certifying registration of the medicinal product or plant protection product;
- 6) the number of the supplementary protection certificate;
- 7) the term of supplementary protection.

§ 395. Application for supplementary protection

(1) The right to apply for and be granted supplementary protection (hereinafter right of application) is vested in the proprietor of the basic patent or a legal successor of the proprietor of the basic patent (hereinafter applicant for supplementary protection).

(2) A supplementary protection application shall be filed within six months as of the date of entry into force of the first registration of the medicinal product or plant protection product. If the said date is earlier than the date of issue of the basic patent, a supplementary protection application shall be filed within six months as of the date of issue of the basic patent.

(3) A supplementary protection application shall contain the following documents:

- 1) a request for the grant of supplementary protection;
- 2) a document certifying the registration of the medicinal product or plant protection product;
- 3) a document certifying payment of the state fee;

4) an authorisation document if the supplementary protection application is filed via a patent agent.

(4) A request for the grant of supplementary protection shall set out:

1) the request for the grant of supplementary protection to a medicinal product or a plant protection product;

2) the name and address of the applicant for supplementary protection;

3) the number of the basic patent and the name of the invention;

4) the number and date of issue of the document certifying registration of the medicinal product or plant protection product;

5) the date of registration of the medicinal product or plant protection product;

6) information regarding the identity of the product specified in the document certifying registration of the medicinal product or plant protection product;

7) the given name and surname of the patent agent if the supplementary protection application is filed via a patent agent.

(5) Other documents deemed necessary by the applicant for supplementary protection may be added to a supplementary protection application.

(6) If documents added to a supplementary protection application pursuant to subsection (5) of this section contain a business secret, the applicant for supplementary protection is required to determine the extent of the business secret.

(7) Supplementary protection application documents shall be filed in Estonian.

(8) A state fee shall be paid upon the filing of a supplementary protection application.

(9) A supplementary protection application shall be filed with the Patent Office.

(10) The requirements for the format of and the procedure for filing supplementary protection application documents shall be established by the Government of the Republic or a minister authorised by the Government of the Republic.

§ 396. Processing of supplementary protection applications

(1) The Patent Office shall verify:

1) the right of application pursuant to subsection 395 (1) of this Act and whether the supplementary protection application is filed on time pursuant to subsection 395 (2) of this Act;

2) the existence of supplementary protection application documents pursuant to the provisions of subsection 395 (3) of this Act and compliance thereof with the formal and substantive requirements;

3) the validity of the basic patent and the registration of the medicinal product or plant protection product on the basis of the document certifying registration.

(2) The Patent Office does not verify whether:

1) the medicinal product or plant protection product is registered for the first time;

2) the same medicinal product or plant protection product has been granted supplementary protection before.

(3) The Patent Office shall inform the applicant for supplementary protection in writing of formal or substantive deficiencies of the supplementary protection application documents or of any other circumstances which hinder the processing thereof and shall establish a term of three months for elimination of the deficiencies or provision of explanations.

(4) If a supplementary protection application is in compliance with the provisions of subsections 395 (1) -(3) and clauses 394 (2) 1) -3) of this Act, the Patent Office shall make a decision to grant supplementary protection and shall notify the applicant for supplementary protection thereof in writing.

(5) If an applicant for supplementary protection has no right to apply for supplementary protection, or the supplementary protection application is not filed on time or is not in compliance with the provisions of clauses 394 (2) 1) -3) of this Act or if the formal or substantive deficiencies of the documents are not eliminated or explanations are not provided during the term determined pursuant to subsection (3) of this section, the Patent Office shall make a decision to reject the supplementary protection application and shall notify the applicant for supplementary application thereof in writing.

(6) The Patent Office shall publish a notice of the filing of a supplementary protection application, the grant of supplementary protection and the rejection of a supplementary protection application in the official gazette of the Patent Office. The notice shall set out the following:

1) the number and filing date of the supplementary protection application;

2) the name and address of the applicant for supplementary protection or the person granted supplementary protection;

3) the number of the basic patent and the name of the invention;

4) the number and date of issue of the document certifying registration of the medicinal product or plant protection product;

5) the date of registration of the medicinal product or plant protection product;

6) information regarding the identity of the product specified in the document certifying registration of the medicinal product or plant protection product;

7) the number and term of validity of the supplementary protection certificate if supplementary protection is granted.

(7) The procedure for processing supplementary protection application documents is established by the Government of the Republic or a minister authorised by the Government

of the Republic.

§ 397. Supplementary protection certificate

(1) A supplementary protection certificate is a document certifying extension of the validity of rights arising from the registration of an invention at the end of the term of validity of a basic patent.

(2) The Patent Office shall issue a supplementary protection certificate to a person who applied for supplementary protection for a medicinal product or a plant protection product within one month as of the publication date of the notice concerning the entry of extension of the validity of rights arising from the registration of an invention.

(3) The requirements for the format of and the procedure for issuing supplementary protection certificates shall be established by the Government of the Republic or a minister authorised by the Government of the Republic.

§ 398. Term of supplementary protection

(1) The term of supplementary protection shall be up to five years as of the date of expiry of the basic patent. The date of expiry of supplementary protection shall not be later than the date on which fifteen years pass from the date of issue of the basic patent or on which the validity of the document specified in clause 395 (3) 2) commences, and in such case the later date shall apply.

(2) For the continued validity of supplementary protection, a state fee shall be paid for each year of validity.

(3) Supplementary protection terminates prematurely if:

1) the person who applied for supplementary protection files a request for the termination of supplementary protection;

2) a state fee is not paid for the year of validity of supplementary protection;

3) evidence concerning revocation of the registration of the medicinal product or plant protection product is submitted to the Patent Office.

(4) The Patent Office shall publish a notice concerning the premature termination of supplementary protection in the official gazette of the Patent Office.

§ 399. Revocation of supplementary protection and contestation and protection of rights

(1) Supplementary protection is revoked and rights arising from supplementary protection are contested and protected pursuant to such provisions of this Act which concern the contestation and protection of patent rights.

(2) Supplementary protection is revoked if:

1) supplementary protection has been granted contrary to the provisions of clauses 394 (2) 1) -3) of this Act;

- 2) the basic patent is invalidated prematurely pursuant to the provisions of § 38 of this Act;
 - 3) the basic patent is revoked pursuant to the provisions of § 49 or 50 of this Act;
 - 4) after the issue of the basic patent, the scope of patent protection has been limited to the extent that the medicinal product or plant protection product is no longer protected by the patent claims;
 - 5) after the basic patent has expired, grounds for revocation exist which would have justified the revocation of patent protection or limitation of the scope of patent protection such that the medicinal product or plant protection product is no longer in compliance with the terms of the patent claims.
- (3) The Patent Office shall publish a notice concerning the revocation of supplementary protection in the official gazette of the Patent Office.

Chapter IX. State Fees ➔

§ 40. State Fees

In the cases prescribed by this Act, state fees are charged for the performance of acts, issue of documents and the continued validity of patent applications and patents pursuant to the provisions of the State Fees Act (RT I 1997, 80, 1344; 86, 1461; 87, 1466 ja 1467; 93, 1563; 1998, 2, 37; 4, 63; 23, 321; 36/37, 552 ja 553; 52/53, 771; 57, 859; 59, 941; 60, 951; 61, 979 ja 985; 64/65, 1004, 1005 ja 1008).

§ 41. Payment of state fees

- (1) The state fee shall be paid by an applicant, proprietor of a patent or another party who has an interest in the performance of an act, the issue of a document prescribed in this Act or the continued validity of a patent application or a patent. If the state fee for application for, issue or continued validity of a patent is paid by a another party, the written consent of the applicant or the proprietor of the patent is required.
- (2) The state fee is deemed to be paid upon receipt of a document by the Patent Office certifying payment of the state fee or, in the case of an appeal, upon receipt of such document by the committee.
- (3) Paid state fees are not refunded, except in the cases provided for in subsections 22 (4) and 30 (4) and (5) of this Act.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 42. Payment of state fee for year of validity

- (1) The state fee for a year of validity shall be paid within six months before the due date of payment. The last day of the calendar month during which the year of validity begins is deemed to be the due date of payment.
- (2) State fees for the first, second and third year of validity shall be paid at the same time within six months before the due date of payment of the state fee for the third year of

validity.

(3) The state fee for a year of validity may be paid within six months after the due date of payment if a supplementary state fee is also paid.

(4) The Patent Office may grant an applicant or a proprietor of a patent, if the applicant or proprietor is also the author, a period of grace for the payment of the state fee for the first five years of validity. The application for a period of grace shall be filed with the Patent Office before the relevant due date of payment. The decision of the Patent Office regarding the grant of a period of grace for the payment of the state fee for a year of validity is final.

(5) If the Patent Office refuses to satisfy an application for a period of grace and the due date for payment has passed, the state fee for the year of validity may be paid without an additional state fee within two months as of the date of the decision of the Patent Office.

(6) The state fee for the first year of validity of supplementary protection shall be paid within six months before the due date of payment. The last day of the calendar month during which the term of validity of the basic patent ends is deemed to be the due date of payment.

(7) The state fee for each following year of validity of supplementary protection shall be paid within six months before the due date of payment of the state fee for the year of validity of supplementary protection. The last day of the calendar month during which the year of validity of supplementary protection ends is deemed to be the due date of payment.

(8) The state fee for a year of validity of supplementary protection may be paid within six months after the due date of payment of the state fee for the year of validity of supplementary protection if a supplementary state fee is also paid.

(9) Upon filing an international application for national processing, state fees for the first, second and third year of validity shall be paid without the supplementary state fee specified in subsection (3) of this section if the due date for payment of the state fee has passed by the filing date of the request for acceptance for national processing.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

Chapter X. Transfer of Patent Rights ➡

§ 43. Transfer of right to apply for patent

(1) Any person who pursuant to § 12 of this Act has the right to apply for a patent may transfer such right to another person.

(2) The right to apply for a patent shall transfer to a legal successor.

§ 44. Transfer of patent application

(1) An applicant may transfer a patent application which is being processed by the Patent Office to another person.

(2) In the event of the death of an applicant or dissolution of an applicant who is a legal person, a patent application which is being processed by the Patent Office shall transfer to

a successor or a legal successor.

(3) In order to amend the data on the applicant in a patent application, the applicant or the person to whom the patent application transfers shall file a request and a document certifying payment of the state fee with the Patent Office. If a request is filed by the person to whom the patent application transfers, the request shall be accompanied by a document certifying the transfer or an officially certified copy thereof.

(4) The Patent Office shall amend the data on the applicant in the patent application.

(5) A patent application is deemed to be transferred to another person from the date on which the data is amended.

§ 45. Transfer of patent

(1) The proprietor of a patent may transfer the patent to another person.

(2) In the event of the death of the proprietor of a patent or dissolution of the proprietor if the proprietor is a legal person, the patent transfers to a successor or a legal successor.

(3) In order to amend the data on the proprietor of a patent in a registration, the proprietor of the patent or the person to whom the patent transfers shall file a request and a document certifying payment of the state fee with the Patent Office. If a request is filed by the person to whom the patent transfers, the request shall be accompanied by a document certifying the transfer or an officially certified copy thereof.

(4) The request specified in subsection (3) of this section shall be filed within one year after the date of transfer of the patent determined by the transaction or after the date of legal succession. If a patent is transferred pursuant to a court judgment, the request shall be filed within one month after the date on which the court judgment enters into force.

(5) The Patent Office shall make an entry in the register on amendment of the registration data specified in clause 35 (2) 6) of this Act.

(6) An entry on amendment of the registration data shall enter into force on the publication date of a notice of the entry to amend the data in the official gazette of the Patent Office.

(7) A patent is deemed to be transferred to another person from the date of transfer pursuant to a transaction or a court order, or from the date of creation of legal succession.

(8) A person to whom a patent is transferred pursuant to the provisions of this section may commence use of the rights of the proprietor of the patent as of the date on which the entry to amend the registration data becomes valid.

§ 46. Licence

(1) The proprietor of a patent (licensor) may, pursuant to a written licence agreement (hereinafter by way of a licence), grant the use of the rights of the proprietor of the patent listed in subsection 15 (1) of this Act to another person or persons (licensee) in part or in full.

(2) With the consent of a licensor, a licensee may, by way of a sublicense, transfer the rights deriving from a licence to a third person.

(3) The term of a licence shall not be longer than the term of patent protection, in the case of supplementary protection of medicinal products and plant protection products not longer than the term of supplementary protection.

(4) Licences may be registered in the register. An unregistered licence has no legal force with respect to third persons.

(5) Upon the transfer of a patent to another person in the cases provided for in § 45 of this Act, the rights and obligations deriving from the licence are also transferred to the said person.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 47. Compulsory licence

(1) A person who is interested in using a patented invention and is capable of doing so in the Republic of Estonia, may, upon refusal of the proprietor of the patent to grant a licence, file an action in court for acquiring a compulsory licence if:

1) the proprietor of the patent has not used the invention in the Republic of Estonia within three years after publication of the notice concerning the issue of the patent or within four years after filing a patent application, and in such case the term which ends later shall apply;

2) the proprietor of the patent does not use the invention in the extent which would correspond to the needs of the domestic market of the Republic of Estonia;

3) the patent hinders the use of another, technically advanced invention significant for the economy of the Republic of Estonia;

4) national defence, environmental protection, public health and other significant national interests of the Republic of Estonia require the use of the invention, including the need to use the invention in connection with a natural disaster or other emergency.

5) the patent hinders the grant of plant variety rights pursuant to the Plant Variety Rights Act (RT I 1998, 36/37, 553; 2000, 10, 56; 2001, 93, 565; 2002, 53, 336; 61, 375; 63, 387) or the use of a plant variety which is granted legal protection.

(11) A compulsory licence shall not be granted if the proprietor of a patent imports the product protected by the patent from any state member of the World Trade Organisation in the extent which corresponds to the needs of the domestic market of the Republic of Estonia.

(2) In the case provided for in clause (1) 3 of this section, the proprietor of a patent has the right to acquire a compulsory licence for another invention, provided that the exchange of licences is not agreed on (cross-licence).

(3) Upon the grant of a compulsory licence, a court shall determine the terms and conditions of the compulsory licence, including the extent and duration of the use of an invention and the amount and procedure for payment of the licence fee. The extent and duration of the use of an invention shall be determined on the basis of the needs of the domestic market of the Republic of Estonia.

(4) The right to use an invention on the basis of a compulsory licence may transfer to another person only together with the enterprise in which the compulsory licence is used or was intended to be used pursuant to the terms of the compulsory licence.

(5) The grant of a compulsory licence does not hinder the proprietor of a patent from using the invention or granting licences to other persons.

(6) A compulsory licence is valid as of the date of making an entry in the register. The registry entry is made on the date of receipt of a document certifying payment of the state fee in the Patent Office.

(7) If circumstances change, both the licensor and the licensee may file an action in court for amendment of the terms of a compulsory licence.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

Chapter XI. Contestation and Protection of Patent Rights ➡

§ 48. Contestation of authorship

(1) Disputes concerning authorship are resolved in court after the publication of a patent application pursuant to the provisions of § 24 of this Act.

(2) Any natural person who finds that he or she is the author of an invention pursuant to the provisions of subsection 13 (1) or (2) of this Act may file an action in court against the applicant or, after the issue of a patent, the proprietor of the patent for certification of his or her authorship. Authorship may also be contested by the successor of such person.

(3) If authorship is certified, the person may, on the basis of § 12 of this Act, contest the applicant or proprietor of the patent pursuant to subsection 49 (1) of this Act in the course of the same case.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 49. Contestation of proprietor of patent and patent

(1) Any person who finds that the right to a patent belongs to the person pursuant to § 12 of this Act may, after the publication of a patent application pursuant to the provisions of § 24 of this Act, file an action in court against the applicant or proprietor of the patent for recognition of the person's rights. If the action is satisfied in the case of a patent application, the person has the right to continue applying for the patent in the person's name, revoke the patent application and file a new patent application with the same filing date concerning the same invention or revoke the patent application. In the case of a patent, the person has the right to register the patent, unamended or subject to amendments, in the person's name or revoke the patent.

(2) A request stating a choice made pursuant to subsection (1) of this section together with a copy of the court judgment and, in the prescribed cases, a document certifying payment of the state fee shall be filed with the Patent Office within one month after entry into force of the court judgment. Upon filing a new patent application or making amendments to the patent, the person must file the documents of the new patent application in accordance with the provisions of subsections 19 (1), (2) and (3) of this Act or, in the case of amendments to

the patent, the amended description of the invention and patent claims with the Patent Office and pay the state fee within three months from the date of the court judgment which has entered into force. Upon failure to comply with the abovementioned requirements, the patent application or patent shall be revoked.

(3) Upon satisfaction of an action filed pursuant to subsection (1) of this section, the person who has used the invention or made serious preparations therefor may apply to a court for the right to use the invention for a charge or free of charge in the person's economic or professional activities after the transfer of the patent, provided that the invention shall be used for the same purposes.

(4) Any person who finds that an invention protected by a patent does not comply with the provisions of § 8 of this Act, may file an action in court against the proprietor of the patent for the revocation of the patent in part or in full. The proprietor of the patent may restrict the scope of patent protection in the course of proceedings in respect of the action if this will result in the invention complying with the provisions of § 8. A request for the making of a register entry together with a copy of the court judgment and, in the prescribed cases, a document certifying payment of the state fee shall be filed with the Patent Office within one month after entry into force of the court judgment. Upon making amendments to the patent, the proprietor of the patent must file the description of the invention and patent claims amended pursuant to the court judgment with the Patent Office and pay the state fee for the making of amendments within three months from the date of the court judgment which has entered into force.

(5) An action specified in subsection (4) of this section can be filed for the full revocation of a patent even after the patent has expired.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 50. Contestation of patent in committee

(1) Any person may file a revocation application with the committee and request the revocation of a patent within nine months after the publication date of the notice of issue of the patent.

(2) A patent maybe contested on the basis of the following allegations:

- 1) the invention does not comply with the provisions of §§ 6, 7 or 8 of this Act;
- 2) the invention is not disclosed in the description of the invention in a sufficiently clear and concise manner to enable a person skilled in the art to make the invention;
- 3) the invention protected by the patent, including an invention separated from an initial patent application pursuant to subsection 9 (2) or (3) of this Act, does not correspond to the subject matter of the invention as disclosed in the initial patent application.

(3) The committee has the right:

- 1) if the revocation application is granted, to require the Patent Office to revoke the patent provided that the facts set out in the revocation application prejudice the maintenance of the patent,
- 2) to reject the revocation application if the facts set out therein do not prejudice the

maintenance of the patent unamended, or

3) if the revocation application is granted in part, to require the Patent Office to maintain the patent as amended provided that, during the processing of the revocation application, the proprietor of the patent files a request for the making of such amendments to the patent which are not contrary to the provisions of this Act and which eliminate the facts set out in the revocation application as prejudicial to the maintenance of the patent.

(4) In the case of a decision specified in clause (3) 3) of this section, the proprietor of the patent must file the description of the invention and patent claims amended pursuant to the decision with the Patent Office and pay the state fee for the making of amendments to the patent within three months from the date of the decision.

(5) The Patent Office shall make an entry in the register on the basis of a decision of the committee and shall publish a notice concerning the revocation of a patent or making of amendments to a patent in the official gazette of the Patent Office. If, in the case of amendments to a patent, the proprietor of the patent fails to file the prescribed documents or pay the state fee within the term specified in subsection (3) of this section, the patent shall be deemed to be revoked and the invention shall be deleted from the register.

(6) The person who filed a revocation application or the proprietor of a patent may contest the decision of the committee in court within three months from the date on which the decision was made.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 51. Protection of rights of author

(1) The author of an invention may file, without a limitation period, an action in court upon infringement of the rights provided for in subsection 13 (7) of this Act and for the resolution of other non-proprietary disputes arising from authorship.

(2) An author may file an action in court for the resolution of a proprietary dispute relating to the use of an invention within three years as of the date on which the author becomes or should have become aware of the infringement of the author's right.

§ 52. Protection of rights of applicant

(1) Pursuant to § 30 of this Act, an applicant may file an appeal with the committee against a decision of the Patent Office or may, within two months as of the date of the decision, file an appeal with an administrative court.

(2) Upon disagreement with a decision of the committee, an applicant may contest the decision by filing an appeal with an administrative court within three months as of the date of making the decision.

(3) An applicant may file an action in court upon infringement of the exclusive right which took place during the period of provisional protection and may request prevention of the infringement.

§ 53. Legal remedies in case of unlawful use of invention protected by patent

(1) In the case of unlawful use of an invention protected by a patent, the proprietor of the

patent may demand:

1) compensation for damage caused by unlawful use of the invention pursuant to § 1043 of the Law of Obligations Act;

2) [Repealed - RT I 2003, 18, 106 - entered into force 01.04.2003]

3) the transfer of that which is received as a result of the unlawful use of the patent pursuant to §§ 1037 and 1039 of the Law of Obligations Act.

(2) Upon use of an invention protected by a patent in good faith, a court may order compensation not exceeding the extent of damage caused within five years before the filing of the action.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 54. Protection of rights of other persons

(1) A person who uses an invention in good faith before a patent application is filed may file an action in court against the proprietor of the patent for certification of the person's right of prior use.

(2) A person who is interested in using a patented invention may file an action in court against the proprietor of the patent for acquiring a compulsory licence in the cases specified in subsection 47 (1) of this Act.

(3) A person who uses an invention on the basis of a licence (licensee) may file an action in court for resolution of a dispute related to the licence.

(4) A licensee may also file an action upon violation of the exclusive right of the proprietor of a patent by other persons, unless otherwise provided in the licence agreement. The licensee shall notify the proprietor of a patent of the licensee's wish to file an action beforehand. The obligation to notify is deemed to be performed if the notice is sent to the proprietor of the patent by registered mail to the address indicated in the licence agreement or to the address entered in the register of patents.

(5) Any person may, upon doubt that the person's activities may infringe the exclusive right of the proprietor of a patent, file an action in court against the proprietor of the patent to certify that the existence of the patent does not hinder the person's economic or professional activities.

(6) Any person against whom an action has been filed on the basis of § 53 of this Act or misdemeanour proceedings or proceedings relating to a criminal offence have been commenced in connection with an alleged infringement of the exclusive right of the proprietor of a patent, has the right, pursuant to subsection 49 (4) of this Act, to file an action in court against the proprietor of the patent for the revocation of the patent in part or in full. During the proceedings in respect of the action for the revocation of the patent in part or in full, proceedings in respect of the action concerning the infringement of the exclusive right of the proprietor of the patent, misdemeanour or criminal offence shall be suspended.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 55. Procedure for hearing of disputes related to patents

(1) In the cases provided for, disputes related to patents shall be heard by the committee or in court.

(2) Actions referred to in §§ 48, 49 and 51, subsections 54 (1), (2), (3), (5) and (6) of this Act and appeals and actions referred to in §§ 50 and 52 of this Act fall within the competence of the court in the jurisdiction of which the Patent Office is located. Actions referred to in § 53 and subsection 54 (4) and § 551 fall within the competence of the county or city court in the jurisdiction of which the offence occurred. Implementation of provisional measures referred to in Article 50 of the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement (RT II 1999, 22, 123) falls within the competence of the county or city court in the jurisdiction of which the offence occurred.

(3) Courts shall hear disputes related to patents pursuant to the procedure provided for in the Code of Civil Procedure (RT I 1993, 31/32, 538; 1998, 43-45, 666; 1999, 31, 425; 2000, 51, 319; 55, 365; 2001, 21, 113; 34, 186), taking into consideration the specifications established in this Act.

(4) A court may refuse to hear a statement of claim if it only concerns a complaint which is subject to resolution by the committee pursuant to this Act and the complaint has not been reviewed by the committee.

(5) The committee shall hear complaints filed with the committee on the basis of this Act pursuant to the procedure provided for in the statutes of the committee.

[RT I 2003, 18, 106 - entered into force 01.04.2003]

§ 551. Burden of proof

(1) If an action is filed on the basis of the provisions of subsection 15 (2) of this Act, the defendant is required to prove that the defendant used a process different from the patented process for manufacturing a similar product.

(2) If the use of a different process cannot be proved, the product shall be deemed to have been manufactured according to the patented process provided that, in spite of reasonable efforts, the proprietor of the patent has not succeeded in determining the process actually used for manufacturing the product and the use of the patented process is likely or if the product manufactured according to the patented process is new.

(3) Evidence submitted by the defendant containing the defendant's production or business secrets may be disclosed only with the consent of the defendant.

§ 56. Acts of court upon filing of statement of claim

(1) In the case of an action specified in subsection 54 (4) of this Act, a copy of the notice sent to the proprietor of a patent shall be annexed to the statement of claim. If the copy is missing, the court shall not proceed with the statement of claim and shall determine a term for the plaintiff for the performance of the obligation to notify.

(2) A court may order, at the request of the plaintiff, that the products or objects protected by a patent and manufactured without the permission of the proprietor of the patent, the use of which infringes the exclusive right of the proprietor of the patent, shall be removed from circulation for the time of hearing the action filed for termination of an infringement of the

exclusive right. If necessary, the court may demand a security from the plaintiff for compensating for the damage to the defendant upon dismissal of the action.

(3) In the case specified in subsection (2) of this section, a court may, at the request of the defendant, order that the possessor of a product or an object may continue the use of the product or object for a fair fee payable to the proprietor of the patent during the entire or a part of the remaining time of the term of the patent.

§ 57. Participation of Patent Office

(1) In the court hearing of disputes related to patents, the Patent Office may participate in the proceedings as a third party.

(2) A court shall send a copy of the court judgment made in a dispute related to a patent to the Patent Office for its information even if the Patent Office has not participated in the proceedings.

§ 58. Representative in resolution of disputes related to patents in court

(1) In resolution of disputes related to patents, in addition to the persons specified in § 81 of the Code of Civil Procedure, patent agents may also act as representatives in court.

(2) The authority of a patent agent is certified by a patent agent's certificate and an authorisation document from the client.

(3) If the plaintiff is a person whose residence or seat is in a foreign state, the person shall authorise a natural person whose residence is in the Republic of Estonia as the plaintiff's representative for the receipt of notices, summons and documents of the court.

Chapter XII. Patenting of Inventions in Foreign States ➡

§ 59. Procedure for patenting inventions

(1) Persons whose residence or seat is in the Republic of Estonia may patent their inventions in foreign states regardless of the patenting thereof in the Republic of Estonia.

(2) Persons whose residence or seat is in the Republic of Estonia are responsible for patenting their inventions in foreign states in accordance with the law of the foreign state and international conventions.

§ 60. Filing of international application

International applications are filed pursuant to subsections 32 (3) and (4) of this Act.

Chapter XIII. Implementation of Act ➡

§ 61. Entry into force of Act

(1) The Patents Act enters into force on 23 May 1994.

(2) The provisions of clause 11 (2) 1) of this Act apply after the membership of the Republic of Estonia in the Paris Convention for the Protection of Industrial Property is restored.

(3) The provisions of subsection 23 (2) and Chapter VI of this Act do not apply earlier than three months after the accession of the Republic of Estonia to the Patent Cooperation Treaty entered into on 19 June 1970 in Washington.

(4) Micro-organism strains are protected by patents after the accession of the Republic of Estonia to the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure of 1977 (RT II 1996, 14/15, 49).

(5) If a patent application is filed within six months after entry into force of this Act, all priorities shall be recognised on the basis of a first patent application or registration application of a utility model which is filed in any State party to the Paris Convention of the Protection of Industrial Property and which is not filed earlier than on 20 August 1990.

(6) Supplementary protection for medicinal products or plant protection products which are registered and which contain an active substance protected by a basic patent issued prior to 1 January 2000 may be applied for until 30 June 2000.

§ 62. Repeal of Acts

§§ 521-523 of Part V and §§ 524-530 of Part VI of the Estonian SSR Civil Code are repealed.

1 RT = Riigi Teataja = State Gazette

2 Riigikogu = the parliament of Estonia