

Act to Amend the Patents Act

WE, MARGRETHE THE SECOND, by the Grace of God Queen of Denmark, do by these presents make it known that the Folketing has passed and We have given the Royal Assent to the following Act:

Section 1

The Patents Act, cf. the Consolidate Act No. 546, 25th October, 1978, shall be amended as follows:

(i) Section 8(2) shall be worded as follows:

"(2) The application shall contain a description of the invention, including drawings where necessary, and a precise statement of the matter for which protection by the patent is sought (one or more claims). The fact that the invention relates to a chemical compound shall not imply that a specific use must be indicated in the claim. The description shall be sufficiently clear to enable a person skilled in the art to carry out the invention. An invention which relates to a microbiological process or to a product obtained by such a process shall, in the cases specified in section 8a, only be regarded as disclosed in a sufficiently clear manner if also the requirements of section 8a are fulfilled."

(ii) Section 8(5) shall be worded as follows:

"(5) The applicant shall pay the prescribed application fee. For the patent application the prescribed renewal fee in respect of each fee year beginning before the application is finally decided upon shall also be paid. The fee year shall comprise one year and shall the first time be reckoned from the date of filing of the application and thereafter from the corresponding day of the calendar year."

(iii) After section 8 there shall be inserted:

"Section 8a

(1) If the carrying out of the invention involves the use of a micro-organism which is neither available to the public nor describable in the documents of the application in such a manner as to enable a person skilled in the art to carry out the invention, a culture of the micro-organism shall be deposited not later than the date of filing of the application. The culture shall thereafter be continuously deposited so that any person entitled under this Act to a sample of the culture may have the sample furnished in Denmark. The Minister of Industry shall lay down rules as to where deposits may be made.

(2) If a deposited culture ceases to be viable, or if for any other reason a sample of the culture cannot be furnished, the culture may be replaced by a new culture of the same micro-organism within the prescribed period and otherwise in accordance with rules laid down by the Minister of Industry. If so, the new deposit shall be deemed to have been made already on the date of the previous deposit."

(iv) Section 14(2) shall be worded as follows:

"(2) Any request under subsection (1) shall be submitted within 2 years from the date of filing of the application. A request may not be submitted more than once and may not be withdrawn."

(v) In section 15 there shall be inserted as subsection (4):

"(4) If any renewal fee is not paid according to sections 8, 41 and 42, the application shall be shelved without previous notification. In the case of an application shelved for that reason the proceedings for grant may not be resumed."

(vi) Section 22(6) shall be repealed, and instead there shall be inserted:

"(6) If a culture of a micro-organism has been deposited under section 8a, any person shall have the right to obtain a sample of the culture when the files become available under subsections (1), (2) or (3). This does not imply that any sample shall be furnished to any person who, according to rules laid down in or pursuant to law, is not allowed to handle the deposited micro-organism. Nor shall

any sample be furnished to any person if, due to the dangerous properties of the organism, his handling of the sample is supposed to involve obvious danger.

(7) Notwithstanding subsection (6) the applicant may request that until the application has been laid open to public inspection or has been finally decided upon without having been laid open to public inspection the furnishing of a sample shall only be effected to an expert in the art. The Minister of Industry shall lay down provisions governing the time limit for the submission of such a request and prescribing who may be used as an expert.

(8) The request for the furnishing of the sample shall be filed in writing with the Patent Authority and shall contain a declaration to observe the restrictions on the use of the sample which appear from rules laid down by the Minister of Industry. If the sample is to be furnished to an expert in the art, the declaration shall instead be given by the latter."

(vii) Section 31 shall be worded as follows:

"Section 31

(1) if the applicant wishes to proceed with an international application with respect to Denmark, he shall within 20 months from the international date of filing or, if priority is claimed, from the priority date pay the prescribed fee to the Patent Authority and file a translation into Danish of the international application to the extent prescribed by the Minister of Industry or, if the application is written in Danish, a copy of the application.

(2) If the applicant demands that an international application shall be the subject of an international preliminary examination, and if within 19 months from the date referred to in subsection (1) he declares in accordance with the Treaty that he intends to use the results of that examination in Denmark (election of Denmark), he shall comply with the requirements of subsection (1) within 30 months from the said date.

(3) If the applicant has paid the prescribed fee within the time limits fixed in subsections (1) and (2), the prescribed translation or copy may be filed within a further period of 2 months provided that a prescribed additional fee is paid prior to the expiry of the further period.

(4) If the applicant fails to fulfil the requirements of this section, the application shall be considered withdrawn as far as Denmark is concerned."

(viii) Section 32 shall be worded as follows:

"Section 32

If the applicant withdraws a demand for international preliminary examination or an election of Denmark, the international application shall be considered withdrawn as far as Denmark is concerned unless the withdrawal has been effected prior to the expiry of the time limit applicable under section 31(1) and the applicant proceeds with the application prior to the expiry of the time limits prescribed in section 31(1), cf. section 31(3)."

(ix) Section 33(1) shall be worded as follows:

"(1) When an international application has been proceeded with under section 31, the provisions of Part II of this Act shall apply to the application and to the examination and further processing thereof with the deviations provided for in this section and in sections 34 to 37. The examination and further processing of the application shall only be commenced prior to the expiry of the time limits applicable under section 31(1) or (2) if the applicant so requests."

(x) Section 33(3) shall be worded as follows:

"(3) The provisions of section 22(2) and (3) shall apply even before the application has been proceeded with when the applicant has complied with his obligation under section 31 to file a translation of the application or, if the application is written in Danish when the applicant has filed a copy thereof with the Patent Authority."

(xi) Section 34 shall be worded as follows:

"Section 34

An international application shall only be accepted for laying open to public inspection or refused after the expiry of a time limit prescribed by the Minister of Industry unless the applicant has consented to the application being decided upon prior thereto."

(xii) Section 38(2) shall be worded as follows:

"(2) A request for a review under subsection (1) shall be presented to the International Bureau prior to the expiry of a time limit prescribed by the Minister of Industry. The applicant shall, prior to the expiry of the same time limit and to the extent prescribed by the Minister of Industry, file a translation of the application with the Patent Authority and pay the prescribed application fee."

(xiii) Section 40 shall be worded as follows:

"Section 40

A granted patent may be maintained until 20 years have elapsed from the date of filing of the patent application. For the patent a renewal fee shall be paid in respect of each fee year beginning after the grant of the patent."

(xiv) In Part V the heading shall be changed into:

"Payment of renewal fees"

(xv) Section 41 shall be worded as follows:

"Section 41

(1) The renewal fee shall fall due on the last day of the month in which the fee year begins. The renewal fees in respect of the first two fee years shall, however, only fall due at the same time as the fee in respect of the third fee year. Renewal fees may not be paid earlier than 3 months before the due date.

(2) For a later application as provided for in section 11 the renewal fees in respect of fee years having begun before the date of filing of the later application or beginning within 2 months after that date shall in no case fall due before 2 months have elapsed after the said date. For an international application renewal fees in respect of fee years having begun before the date on which the application was proceeded with under section 31 or taken up for examination and other processing under section 38 or beginning within 2 months after that date shall in no case fall due before 2 months have elapsed after the date on which the application was proceeded with or taken up for examination and other processing.

(3) Any renewal fee may, together with the prescribed additional fee, be paid within 6 months after its due date."

(xvi) Section 42 shall be worded as follows:

"Section 42

(1) If the inventor is the applicant or the proprietor of the patent, and if it is deemed to involve great difficulties for him to pay the renewal fees, the Patent Authority may grant him a respite for the payment thereof, provided that a request to that effect is submitted not later than the date on which the renewal fees fall due the first time. Respites may be granted of up to 3 years at a time, but no longer than until 3 years have elapsed from the grant of the patent. Any request for a prolongation of a respite shall be submitted not later than the date on which the granted respite expires.

(2) If a request for a respite or a prolongation of a respite is rejected, payment within 2 months thereafter shall be regarded as payment in due time.

(3) Any renewal fee for the payment of which a respite has been granted according to subsection (1) may, together with the same additional fee as referred to in section 41(3), be paid within 6 months after the date until which the respite has been granted."

(xvii) Section 51 shall be worded as follows:

"Section 51

If any renewal fee is not paid in accordance with the rules laid down in sections 40, 41 and 42, the patent shall lapse as from the beginning of the fee year in respect of which the fee has not been paid."

(xviii) Section 52(1)(ii) shall be worded as follows:

"(ii) it relates to an invention which is not disclosed in a manner sufficiently clear to enable a person skilled in the art to carry out the invention,"

(ixx) Section 56(1) shall be worded as follows:

"(1) An applicant for a patent who invokes his patent application against another person before the files of the application have become available to the public shall be under an obligation on request to consent to letting the said person obtain inspection of the files of the application. If the application comprises a deposited culture of a micro-organism as referred to in section 8a, the said person shall also have a right to obtain a sample of the culture. The provisions of section 22(6), second and third sentences, (7) and (8) shall apply in those cases."

(xx) In section 66(2) for "section 160(2)" there shall be substituted "section 159(2)."

(xxi) Section 68 shall be worded as follows:

"Section 68

(1) The Minister of Industry shall fix the amounts, etc. of the fees provided for in this Act and of handling fees, etc.

(2) As far as renewal fees are concerned, the Minister of Industry may direct that one or more of the first fee years shall be fee-free."

(xxii) Section 69(3) shall be worded as follows:

"(3) The Minister of Industry may furthermore direct that at the request of the Patent Authority and within a time limit fixed by that Authority any applicant who in any country has filed a corresponding application for a patent shall furnish information about the result of the examination as to the patentability of the invention which has been communicated to him by the patent authority of that country and transmit a copy of the correspondence with the said authority. However, no obligation to furnish information may be prescribed in respect of any application referred to in Part III of this Act which has been the subject of an international preliminary examination on which a report has been filed with the Patent Authority."

(xxiii) Section 72 shall be worded as follows:

"Section 72

(1) If, apart from the cases referred to in subsection (2), the non-observance of a time limit vis-à-vis the Patent Authority prescribed by or provided for in this Act causes a loss of rights to an applicant who has taken all due care reasonably required, the Patent Authority shall on request re-establish his rights. The request shall be filed in writing with the Patent Authority within 2 months from the removal of the cause of the non-observance of the time limit though not later than 1 year after the expiry of the time limit. Within the same time limits the omitted act shall be completed and the fee prescribed for the re-establishment of rights be paid.

(2) The provisions of subsection (1) shall apply *mutatis mutandis* if an applicant or a proprietor of a patent has not paid a renewal fee within the time limit prescribed in section 41(3) or section 42(3) provided that the request for re-establishment of rights is filed and the renewal fee is paid not later than 6 months after the expiry of the time limit.

(3) The provisions of subsection (1) shall not apply to the time limit referred to in section 6(1)."

Section 2

(1) Section 1 (vii) to (xii), (xx) and (xxii) shall enter into force 3 months after the publication of this Act in the Law Gazette.

(2) The date on which the remaining provisions of this Act shall enter into force shall be fixed by the Minister of Industry.

Section 3

The provisions of this Act shall apply to patent applications which on the date of entry into force of the provisions are pending before the Patent Authority. To this provision the following exceptions shall apply:

(i) The provisions relating to the deposit of cultures of micro-organisms shall only apply to applications filed after the entry into force of those provisions.

(ii) For patent applications filed before the entry into force of section 1 (ii), (iv), (v), (xiii) to (xvii), (xxi) and (xxiii), cf. Section 2(2), renewal fees in respect of earlier fee years shall fall due at the same time as a renewal fee is payable the first time in accordance with section 1 (xv) (section 41) and section 1 (xvi) (section 42).

(iii) Notwithstanding the provision of section 1 (iv) (section 14(2) any request under section 14(1) (Act No. 479, 20th December, 1967) may be submitted in accordance with the rules hitherto in force up to 6 months from the entry into force of section 1 (ii), (iv), (v), (xiii) to (xvii), (xxi) and (xxiii), cf. Section 2(2).

Section 4

The provisions of this Act shall also apply to patents which have been granted at the entry into force of the provisions. To this provision the following exceptions shall apply:

(i) If a patent has been granted less than 2 months before the entry into force of section 1 (ii), (iv), (v), (xiii) to (xvii), (xxi) and (xxiii), cf. Section 2(2), the fees in respect of fee years having begun before the grant shall fall due in accordance with section 42 of Act No. 479, 20th December, 1967.

(ii) The provisions relating to the revocation of patents of Act No. 479, 20th December, 1967, and Act No. 264, 8th June, 1978, shall apply to patents granted under the said Acts.

(iii) The provisions relating to the deposit of cultures of micro-organisms shall only apply to patents granted on the basis of applications filed after the entry into force of those provisions.

Done at the Christianborg Castle on the 11th day of April, 1984

Under Our Royal Hand and Seal
MARGRETHE R.

/IB STETTER