

The Patent and Trademark Office

Order No. 93 of 29 January 2009

## Order on Patents and Supplementary Protection Certificates

Pursuant to sections 5(2), 6(1), 2nd sentence, 6(2), 8a, 8b(2), 9, 11, 22(7), 22(8), 28(2), 31, 34, 38(2), 45(2), 48(3), 69, 71(2), 87a, 88(1)(iii), 90, 91 and 97 of the Patents Act, cf. Consolidate Act No. 91 of 28 January 2009, and by authority under section 1 of Order No. 39 of 17 January 2002 on reference of certain rights to the Patent and Trademark Office, it is laid down that:

### Part I

#### Patent applications

##### Chapter 1

##### *Scope*

1.- Unless otherwise provided, the provisions relating to patent applications shall only apply to:

- (i) Danish patent applications,
- (ii) international applications proceeded with under section 31 of the Patents Act or taken up for examination and other processing under section 38 of the Patents Act, and
- (iii) European patent applications converted into Danish patent applications pursuant to section 88 of the Patents Act.

##### Chapter 2

##### *Filing and recording of applications*

2.-(1) Danish patent applications shall be filed with the Patent and Trademark Office. Application forms shall be provided free of charge.

(2) International applications designating Denmark shall be filed with an office or an international organisation being the

prescribed receiving Office under the Patent Cooperation Treaty (PCT). Provisions relating to the Patent and Trademark Office as receiving Office are laid down in sections 103 to 107.

(3) European patent applications designating Denmark shall be filed with an office or a European organisation being the prescribed receiving Office under the European Patent Convention. Provisions relating to the receipt of European patent applications by the Patent and Trademark Office are laid down in sections 112 and 113.

3.-(1) A Danish patent application shall state:

- (i) the applicant's name or firm name, postal address and, if the applicant is not represented by an agent, his telephone and fax number, if any, and, if the applicant is represented by an agent, the latter's name or firm name, postal address and telephone and fax number, if any,
- (ii) the inventor's name and postal address,
- (iii) a brief and factual title of the claimed invention,
- (iv) if the patent is applied for by several applicants jointly, and those applicants are not represented by an agent, whether one of them shall be authorised to receive communications from the Patent Authority on behalf of all the applicants, since otherwise the applicant mentioned first shall automatically receive communications from the Patent Authority on behalf of all the applicants,
- (v) if the application comprises the deposit of a sample of biological material as

referred to in section 8a(1) of the Patents Act, information to that effect,

(vi) if the patent is applied for by someone other than the inventor, the applicant's title to the invention, and that the inventor has been informed of the filing of an application for a patent for the invention, cf. section 8(4) of the Patents Act, and

(vii) the documents accompanying the application.

(2) The documents accompanying the application shall include:

(i) a description of the invention, including drawings or photographs if required for the understanding of the invention and a sequence listing if so required, cf. section 19, claims and an abstract,

(ii) a power of attorney, cf. section 122.

(3) The prescribed fee shall accompany the application.

(4) If an invention relates to or makes use of a biological material of vegetable or animal origin, the patent application shall contain information about the geographical origin of the material if the applicant is aware thereof. If the applicant is not aware of the geographical origin of the material, that shall appear from the application. Lack of information about the geographical origin of the material or about the applicant's non-awareness thereof shall not affect the examination and other processing of the patent application or the validity of the rights conferred by the granted patent.

(5) If an invention relates to or makes use of a biological material of human origin, it shall appear from the patent application whether the person from whom the biological material originates has given his consent to the filing of the application. The information about consent shall not affect the examination and other processing of the patent application or the validity of the rights conferred by the granted patent.

4.- If the applicant wishes the search referred to in section 9 of the Patents Act to be

performed, a request to that effect shall be filed not later than 3 months from the date of filing of the application or from the date on which the application shall be deemed to have been filed, cf. section 38.

5.-(1) The Patent and Trademark Office shall mark the application with the date on which the application was filed and the conditions under section 8b(1)(i) to (iii) of the Patents Act were fulfilled.

(2) If the conditions laid down in section 8b of the Patents Act for the accordance of a date of filing are not fulfilled, and the Patent and Trademark Office has information enabling it to contact the applicant, the Patent and Trademark Office shall invite the applicant to remedy the deficiencies before the expiry of a time limit of two months from the notification thereof.

(3) Where one or more of the conditions laid down in section 8b(1) of the Patents Act are not fulfilled in the application as originally filed, the date on which all the conditions are subsequently fulfilled shall be regarded as the date of filing of the application, provided that the time limit referred to in section 8b(3) of the Patents Act has been observed.

(4) Where part of the description seems to be missing from the application, or where the application refers to a drawing which seems to be missing, the Patent and Trademark Office shall invite the applicant to submit the missing part or drawing before the expiry of a time limit of two months from the notification thereof.

(5) Where a missing part of the description or a missing drawing is filed with the Office before the expiry of a time limit of two months calculated from the date on which one or more of the conditions pursuant to section 8b(1) of the Patents Act are fulfilled or from the forwarding of the invitation referred to in subsection 4 to the applicant, that part of the description or the drawing shall be included in the application and, subject to subsections 6 and 7, the date of filing shall then be the date on which the Patent and Trademark Office has received

the said part of the description or the said drawing.

(6) Where the missing part of the description or the missing drawing has been filed as indicated in subsection 5 in order to correct for its omission from an application which, on the date on which one or more of the elements referred to in section 8b(1) of the Patents Act were first received by the Patent and Trademark Office, claims priority from a previously filed application, the date of filing shall, if so requested, be the date on which the conditions in section 8b(1) of the Patents Act are fulfilled, provided that that occurs within a time limit of two months.

(7) Where the missing part of the description or the missing drawing filed under subsection 5 is withdrawn within a time limit of two months calculated from the receipt thereof by the Patent and Trademark Office, the date of filing shall be the date on which the conditions in section 8b(1) of the Patents Act are fulfilled.

(8) If an application contains a reference to a previous application drawn up in one of the languages referred to in section 8(1), that reference may replace the description and any drawing for the purpose of establishing the date of filing of the application.

6.-(1) The Patent and Trademark Office shall keep a record of applications filed.

(2) In the record the following data shall be entered:

- (i) the number of the application,
- (ii) the classes of the application according to the international patent classification system,
- (iii) the applicant's name or firm name and postal address,
- (iv) if the applicant is represented by an agent, the name or firm name and postal address of the agent,
- (v) the inventor's name and postal address,
- (vi) the title of the invention,

(vii) if the application is

(a) a Danish patent application, its date of filing and, if the effective date is different from the date of filing, also the effective date,

(b) an international application, the international filing date and the date on which the application was proceeded with under section 31 of the Patents Act or is deemed to have been filed under section 38(3) of the Patents Act, and the number of the international application,

(c) a converted European patent application, the number of the European patent application, its date of filing under the European Patent Convention and the date on which the European patent application was converted into a Danish patent application,

(viii) if priority is claimed under section 6 of the Patents Act, where the application serving as a basis for the priority claim has been filed and the date of filing and number of that application,

(ix) if the application is resulting from division or excision, the number of the parent application,

(x) if the application comprises the deposit of a sample of biological material, information to that effect and a statement of the institution with which the sample is deposited and the number accorded to the deposited sample by the institution,

(xi) when new applications have resulted from division or excision from the application, information to that effect and a statement of the numbers of those applications,

(xii) if the application has been made available to the public under section 22(3) of the Patents Act, the date thereof,

(xiii) when a utility model application has resulted from the patent application under section 12 of the Utility Models Act, information to that effect and a statement of the number of the utility model application,

(xiv) communications received and fees paid in respect of the application, and

(xv) notifications and communications sent in respect of the application.

(3) The record of the individual application shall be open to the public as from the date when the application is made available to the public. However, the Patent and Trademark Office may decide that some of the data referred to in subsection 2 shall be available to the public before the said date.

7.- The Patent and Trademark Office may advertise information about the applications referred to in section 6. If so, the advertisement shall contain the data referred to in section 6(2)(i) and (iii) to (ix).

### Chapter 3

#### *Languages and presentation of applications*

8.-(1) The Patent and Trademark Office shall examine and process the application, including the performance of a novelty search and an examination as to patentability, on the basis of the description, claims, abstract, drawings and photographs, if those documents are available in Danish, English, Norwegian or Swedish. Other documents may also be drawn up in Danish, English, Norwegian or Swedish.

(2) If a document is drawn up in another language than those prescribed in subsection 1, a translation shall be filed within a time limit to be prescribed by the Office. The applicant may request an extension of the time limit within up to two months after the expiry of the time limit. If the description, drawings, photographs and claims at the filing of the application are presented in a language other than Danish, English, Norwegian or Swedish, the Patent and Trademark Office may, however, abstain from requiring a translation of the parts thereof which are not included in the basic documents, cf. section 25(2). The Patent and Trademark Office may also abstain from requiring a translation of documents other than the description, drawings, photographs, claims and abstract or accept a translation of such other documents into a language other than those referred to in subsection 1. Translations may

be required to be certified by a translator or in another specified approved manner.

(3) If an application has been subject to a novelty search and an examination as to patentability on the basis of English, Swedish or Norwegian documents, the claims shall be filed in Danish when the Patent and Trademark Office has concluded that a patent may be granted. The description, drawings, photographs and abstract shall be filed either in Danish or in English.

9.-(1) The description, claims, drawings, photographs and abstract shall be presented in a form suitable for reproduction.

(2) The said documents and amendments thereto shall be filed in the form prescribed by the Patent and Trademark Office.

### Chapter 4

#### *Priority*

10.-(1) Subject to subsection 2, in order to obtain priority under section 6 of the Patents Act the applicant shall within 3 months from the date of filing of the application in this country or from the date on which the application is deemed to have been filed submit a claim to that effect. The claim shall contain information as to where the application whose priority is claimed was filed, its date of filing and, if it is an international application, additional information pursuant to Rule 4.10 of the Regulations under the Patent Cooperation Treaty. With respect to a Danish patent application, the applicant shall moreover state the number of the application whose priority is claimed as soon as possible.

(2) In international applications the priority claim shall be made in the request. The claim shall include information as to where the application whose priority is claimed was filed, its date of filing, and additional information pursuant to Rule 4.10 of the Regulations under the Patent Cooperation Treaty. It shall, however, be possible to correct or add a priority claim or the additional information referred to above

pursuant to Rule 26bis of the Regulations under the Patent Cooperation Treaty, and a notice to that effect shall then be submitted to the receiving Office or the International Bureau. The notice shall be submitted within 16 months from the priority date or, where the correction or addition will cause a change in the priority date, 16 months from the priority date as so changed, whichever 16-month period expires first. It shall, however, be possible to submit such a notice up to 4 months from the international filing date.

(3) If an application is divided under section 28, the priority claim for the parent application shall also without any separate claim apply to new applications resulting from the division.

(4) If priority is claimed after the filing of the application, or if the priority claim is withdrawn, that shall be effected by submission of a separate notice to the Patent and Trademark Office.

11.- The provision in section 6(1), 1st sentence, of the Patents Act shall apply *mutatis mutandis* to applications filed in a state which has ratified or acceded to the Agreement Establishing the World Trade Organisation (WTO).

12.-(1) An applicant who has claimed priority shall within 16 months from the priority date file with the Patent Authority a certificate from the authority which received the original application, stating its date of filing and the applicant's name, as well as a copy of the application certified by the said authority when that is important to the processing of the claim by the Patent Authority. With respect to international applications a copy of the application whose priority is claimed shall in accordance with Rule 17.1 of the Regulations under the Patent Cooperation Treaty instead be submitted to the International Bureau referred to in section 10 or to the receiving Office, or requested transmitted to the International Bureau in accordance with the same rule.

(2) The Patent Authority may exempt from the obligation to file the documentation prescribed in subsection 1, 1st sentence.

(3) If the applicant fails to file the required documentation in due time, the applicant's right of priority shall lapse.

(4) If in connection with an international application a copy of the application whose priority is claimed has been filed with the International Bureau referred to in section 10, the Patent Authority may only require a copy and a translation of that copy in accordance with Rule 17.2 of the Regulations under the Patent Cooperation Treaty.

13.-(1) For an application to be capable of serving as a basis for priority under section 10, it shall be the first application in which the invention is disclosed.

(2) If the person who filed the first application or his successor in title has filed a subsequent application relating to the same invention with the same authority, the subsequent application may serve as a basis for claiming priority provided that, at the time of the filing of the subsequent application, the first application has been withdrawn, shelved or refused without having been made available to the public and without leaving any rights outstanding or having served as a basis for claiming priority. If priority has been obtained on the basis of such a subsequent application, the previous application may no longer serve as a basis for claiming priority.

14.- A priority claim may be filed for part of an application. For one and the same application priority may be claimed from several applications, even if they relate to different countries. Several applications may be claimed as a basis for priority for a single claim. If priority is claimed on the basis of several applications, the time limits running from the date of priority shall run from the earliest date of priority.

## Chapter 5

### *Claims, description, title and abstract*

15.-(1) The claims shall define the matter for which protection is sought in terms of the technical features necessary to achieve the desired effect. Claims shall contain an introduction including the title of the invention and, if possible, a statement of the art in relation to which the invention constitutes something new (prior art) as well as a characterising portion preceded by the words “characterised by” or the like stating the novel and characteristic features of the invention. A different wording of the claims may be permitted if there are special reasons therefor, e.g. in the case of claims concerning use.

(2) Each claim shall relate to one invention only.

(3) The invention shall, as far as possible, be referred to one of the following categories: product, apparatus, process or use.

(4) A claim shall be clearly worded and shall not contain anything that is irrelevant to the invention specified in the claim or immaterial to the exclusive right applied for.

(5) If it increases the intelligibility of the claims, references, preferably between parentheses, to the drawings or photographs shall be included both in the introduction and in the characterising portion. General remarks such as “as described” or “as illustrated in the drawing” shall not be included in the claims. References in claims may, as an exception, be made directly to line charts or the like which are shown in the drawings.

16.-(1) A patent application may contain several claims. If so, they shall be presented together and be numbered consecutively.

(2) A claim may be independent or dependent. A claim is dependent if it relates to an embodiment of an invention disclosed in another claim of the application and therefore comprises all the features of the said claim. All other claims are independent.

(3) An independent claim may rank *pari passu* with another independent claim. An independent claim ranking *pari passu* with another independent claim shall fully state the invention in question. An independent claim ranking *pari passu* with another independent claim may be formally linked to another claim.

(4) One or more dependent claims may be linked to a claim. A dependent claim may be linked to several previous claims. It shall begin with a reference to such previous claims and then state the additional features of the invention. Dependent claims shall be grouped immediately after the independent claim to which they refer directly or through another dependent claim.

17.-(1) If an application comprises several inventions, it shall only be considered to be in accordance with section 10 of the Patents Act if there is a technical relationship among the inventions. The technical relationship shall manifest itself in the inventions involving, wholly or in part, the same or corresponding special technical features. The expression “special technical features” shall mean the technical features contributed by each invention over and beyond the prior art.

(2) The question whether there is such a relationship among a number of inventions shall be determined without regard to whether they are stated in separate claims or as alternatives within a single claim.

(3) Several independent claims in the same category shall only be included if there is a pronounced technical relationship and obvious difficulties in defining the inventions adequately, e.g. in the form of alternatives, if they were to be included under common definitions in one and the same claim. Also inventions of the sender-receiver type may be stated in separate, independent claims.

18.-(1) The description shall:

(i) start by giving a brief and factual title of the invention,

(ii) specify the technical field to which the invention relates and indicate the technology on which the invention is based, supplemented, if possible, by reference to known literature illustrating the said technology if such information is required,

(iii) disclose the invention which is to be protected in such a way that the technical problem and its solution can be understood and indicate the effects of the invention with reference to the prior art and the means required to achieve those effects,

(iv) illustrate the invention by means of examples or embodiments, referring to drawings or photographs, if any, so that the claims may be deemed to be sufficiently substantiated,

(v) state expressly how the invention may be exploited commercially if that does not appear clearly from the nature of the invention. If the invention relates to a gene, it shall be disclosed expressly how a sequence or part of a sequence of the gene may be exploited commercially, and

(vi) if the invention relates to a change of the genetic identity of an animal, indicate whether the invention may cause pain to the animal and, if so, whether the exploitation of the invention will result in a considerable medical utility value to humans or animals.

(2) If the claims comprise several independent claims, the inventions according to those claims shall be disclosed in the description in the manner referred to in subsection 1.

(3) The description of the invention shall only contain subject-matter which contributes to the understanding of the invention. If newly coined terms or terms which are not generally accepted are used, their meanings shall be explained. Physical values shall be expressed in units which are recognised in international practice, preferably according to the metric system using SI units. Data which do not meet that condition shall be supplemented with an indication in units recognised in international practice. In mathematical formulas symbols in general use shall be employed. In chemical formulas symbols, atomic weights and molecular or

structural formulas in general use shall be employed. In general such technical expressions, signs and symbols as are generally accepted in the field in question shall be employed.

(4) If the patent application comprises the deposit of a sample of biological material, cf. section 8a of the Patents Act, the application as filed shall contain all such relevant information on the characteristics of the biological material as is known to the applicant.

19.-(1) If an application relates to or comprises sequences of nucleotides or amino acids, the description shall contain a sequence listing. The sequence listing shall be drawn up in accordance with the standard prescribed by the Patent and Trademark Office.

(2) The Patent and Trademark Office may decide that a sequence listing as referred to in subsection 1 shall also be filed in machine sensible form. When a sequence listing is filed in machine sensible form, the applicant shall file a declaration to the effect that the information in machine sensible form is identical with the sequence listing referred to in subsection 1.

20.- Drawings and photographs shall be executed as follows:

(i) Drawings shall show the details necessary to understand the description, and those details shall be denoted by corresponding letters and numbers in the description and the drawings.

(ii) Cross-sections shall be hatched.

(iii) The figures of the drawings shall be numbered consecutively and independently of any numbering of the sheets. Photographs shall be numbered consecutively.

(iv) Drawings and photographs shall not contain any text matter except a single word or a few words when absolutely indispensable for the understanding.

21.-(1) The abstract of a Danish patent application shall relate to the description and claims as presented in the basic documents, cf. sections 25(1) and 31(1). The abstract shall contain the title of the invention. It shall be drafted in such a way that the technical problem to which the invention relates, the principles of the solution of that problem through the invention and the principal use of the invention appear clearly. The definitive wording of the abstract shall, if possible, be determined before the application is made available to the public under section 22(2) of the Patents Act.

(2) If an International Searching Authority or the European Patent Office has determined the content of the abstract of an international application or a converted European patent application, the said abstract shall be used. If not, the Patent and Trademark Office shall determine the content of the abstract also of such applications, and subsection 1 shall apply *mutatis mutandis*.

## Chapter 6

### *Deposits*

22.-(1) Deposits under section 8a(1) of the Patents Act shall be made with an institution which is an international depositary authority under the Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure done at Budapest on 28 April 1977 (the Budapest Treaty) or with one of the other depositary institutions recognised by the European Patent Office.

(2) The deposit shall be made in accordance with the Budapest Treaty.

(3) The Patent and Trademark Office shall draw up a list of the institutions with which deposits can be made.

23.-(1) If a deposit of a sample of biological material has been made, the applicant shall within 16 months from the date of filing of the application or, if priority is claimed, from the date of priority submit information stating the institution with which the deposit

has been made and the number which the institution has accorded to the deposited sample. With respect to international applications the said information shall be submitted within the same time limit to the International Bureau referred to in section 10.

(2) If, prior to the expiry of the time limit referred to in subsection 1, the applicant requests that the files of the application be made available earlier than prescribed in section 22(1) and (2) of the Patents Act, the information referred to in subsection 1 above shall be submitted at the latest together with the request. If, prior to the expiry of the time limit referred to in subsection 1, the applicant in an international application requests early publication of the application under Article 21(2)(b) of the Patent Cooperation Treaty, the information shall be submitted to the International Bureau referred to in section 10 at the latest together with the request for publication.

(3) If a deposited sample has been transferred from one depositary institution to another under Rule 5(1) of the Regulations under the Budapest Treaty, the applicant shall as soon as possible after having received the receipt in respect of the transferred deposit inform the Patent and Trademark Office thereof and state the new number accorded to the deposited sample.

(4) As proof of the correctness of the information referred to in subsections 1 and 3, the Patent and Trademark Office may require that the applicant files a copy of the receipt issued by the depositary institution with respect to the deposit.

24.-(1) A new deposit as referred to in section 8a(2) of the Patents Act shall be made in accordance with the provisions of the Budapest Treaty for a new deposit. The new deposit shall be accompanied by a declaration signed by the depositor to the effect that the new deposited biological material is the same as that originally deposited.

(2) A new deposit shall be made within 3 months from the date on which the depositor received notification from the depositary



institution to the effect that samples from the previous deposit cannot be furnished. If the institution has ceased to be an international depositary authority for the kind of biological material to which the deposit belonged, or if it has ceased to comply with its obligations under the Budapest Treaty, and the depositor has not received notification thereof within 6 months from the announcement of the event by the International Bureau referred to in section 10, the new deposit may, however, be made within 9 months from the said announcement. With respect to the other depositary institutions the time limits referred to in the 2nd sentence shall apply from the date of the corresponding announcement by the European Patent Office.

(3) Within 4 months from the date of the new deposit the applicant shall file with the Patent and Trademark Office a copy of the receipt issued by the depositary institution based on the new deposit. If the time limit referred to in section 23(1) or (2) expires later, the copy of the receipt may, however, be filed within the expiry of that time limit. At the filing of the copy of the receipt the number of the application or the patent to which the deposit relates shall be stated.

## **Part II**

### **Examination and other processing of applications**

#### **Chapter 7**

##### *Amendment of patent applications*

25-(1) The basic documents of a Danish patent application, an international application proceeded with under section 31 of the Patents Act or taken up for examination and other processing pursuant to section 38 of the Patents Act and a European patent application requested to be converted pursuant to section 88 of the Patents Act shall consist of the description and accompanying drawings, photographs and claims drawn up in Danish, English, Norwegian or Swedish which were present at the filing of the application or on the date on which the

application is deemed to have been filed, respectively.

(2) If such documents are not present on the date of filing of the application or on the date on which the application is deemed to have been filed, respectively, the basic documents shall consist of the first description and accompanying drawings, photographs and claims filed in Danish or English to the extent the contents appear clearly from the documents present on the said date.

(3) The basic documents of an international application proceeded with pursuant to section 31 of the Patents Act shall consist of the translation of the description, drawings, photographs and claims filed under the said provision with the amendments of the translation which may have been made prior to the expiry of the time limit applying pursuant to section 109. If the international application has been filed with the receiving Office in Danish or English, the basic documents shall consist of the copy of the description, drawings, photographs and claims filed pursuant to section 31 of the Patents Act.

(4) If a patent has been granted with the consent of the applicant, or if the application has been refused prior to expiry of the time limit applying pursuant to section 109, cf. section 34 of the Patents Act, the basic documents shall consist of the description, drawings, photographs and claims present at the time when the decision on the application was made.

(5) If, at the filing of a patent application, it is stated that an application relating to the same invention has been filed previously abroad, and the number and date of filing of that application are stated, a subsequently filed, certified copy of that application shall be considered to have been filed on the date of filing of the Danish application.

26.-(1) A claim shall not be amended so as to contain subject-matter not disclosed in the basic documents, cf. sections 25(1) to (4) and 31(1). If a claim is amended by the addition of new definitions, the applicant shall at the

same time state where the new definitions have their counterparts in the basic documents.

(2) After the Patent and Trademark Office has communicated its observations on the performed novelty search, claims disclosing an invention which is independent of the inventions disclosed in the previously filed claims shall not be included in the same patent application.

(3) Observations on the novelty search of an international application shall not be made prior to the expiry of the time limit applying under section 109, unless the applicant gives his consent thereto.

(4) The applicant may only make amendments or additions to the description, drawings and photographs for the purpose of section 8 of the Patents Act, including the addition of further examples, if they are necessary for illustrative or corrective purposes. Such amendments or additions shall not make the claims contain subject-matter which extends beyond the contents of the basic documents.

(5) At the filing of new copies of the description, the applicant shall submit a declaration stating where the description does not correspond word for word to a previously filed description.

27.- Unless the Patent Authority allows otherwise, amendments or additions to claims shall be effected by filing a new copy of the claims. That copy shall comprise all the maintained claims in consecutive order.

## Chapter 8

### *Division and excision*

28.-(1) If several inventions are described in the basic documents, the applicant may divide the application into several applications. At the request of the applicant a new application relating to an invention derived from the application from which it is divided out (the parent application) shall be deemed to have been filed at the same time as the parent application. The new

application may only relate to subject-matter which, under section 19(2) of the Patents Act, could have been included in the claims of the parent application at the date of filing of the new application.

(2) If the applicant wants protection for an independent invention in an international application, the application shall be divided and a new application fee paid even if the additional fee referred to in section 36(1) of the Patents Act has been paid.

29.- If by addition to the description or the claims or in any other way an invention which does not appear from the basic documents has been disclosed in a patent application, a new application relating to that invention may be excised from the parent application and at the request of the applicant be deemed to have been filed on the date when the document disclosing the invention was received by the Patent and Trademark Office. Excision shall be effected in compliance with section 19(2) of the Patents Act, and in the new application protection shall only be sought with respect to the subject-matter appearing from the parent application on the date of filing of the document in question.

30.-(1) If an application results from division or excision, it shall be stated on which parts of the parent application the claims of the new application are based. Moreover, the applicant shall state in the parent application that division or excision has been effected.

(2) Division or excision may be effected as long as a final decision regarding the parent application has not been taken. Thus division or excision shall be effected before a patent has been granted in the parent application according to section 20(1) of the Patents Act. If the parent application has been refused or shelved, division and excision may be effected until the time limit applying to appeal or resumption expires, irrespective of whether an appeal is filed or the examination and other processing of the application is resumed.

(3) If, however, division or excision is effected after a notification of the approval for the grant of a patent in the parent application has been forwarded, the limitations as to content according to the provision in section 19(2) of the Patents Act shall apply, cf. sections 28(1) and 29 of this Order.

31.-(1) In the event of division or excision, the description and accompanying drawings, photographs and claims filed in connection with the new application shall be regarded as basic documents.

(2) A new application shall only be regarded as resulting from division or excision if that appears from the application at its filing. The date of filing and number of the original application shall be indicated in applications resulting from division or excision.

## Chapter 9

### *Applications available to the public*

32.-(1) When, prior to the grant of a patent, the files of a patent application are made available to the public under section 22 of the Patents Act, the abstract shall be published as soon as its final wording has been determined. The Patent and Trademark Office may also publish other parts of the application together with the abstract. Copies of the published abstract shall be obtainable against payment.

(2) The advertisement to be made when an application is made available to the public shall contain information about the number and classes, the date of filing and, if different from the date of filing, the effective date of the application, the title of the invention, the applicant's name or firm name and postal address and, if he is represented by an agent, the agent's name or firm name and the inventor's name and postal address. If priority has been claimed, the advertisement shall contain information as to where the application serving as a basis for claiming priority was filed, the date of filing of the said application and its number. If the application comprises the deposit of a sample of biological material, that shall be stated in the

advertisement. If the applicant under section 22(7) of the Patents Act has requested that a sample shall be furnished only to an expert in the art, that shall also be advertised.

(3) If the translation of the description and claims of an international application has been amended prior to the expiry of the time limit applying under section 108, but after the files of the application have been made available to the public, an advertisement shall be made to that effect.

33.-(1) A request under section 22(8), 1st sentence, of the Patents Act for the furnishing of a sample of deposited biological material shall be filed with the Patent and Trademark Office and be drawn up in accordance with Rule 11 of the Regulations under the Budapest Treaty.

(2) If the request referred to in subsection 1 is filed before the application to which the deposit relates has been finally decided on, the person requesting the furnishing of the sample shall undertake vis-à-vis the applicant to use the sample for experimental purposes only until the application has been finally decided on and within the same period or, if a patent is granted, until the patent has ceased to have effect not to make the sample available to any third party.

(3) If the request referred to in subsection 1 is filed with respect to a deposit relating to a patent, the person requesting the furnishing of the sample shall undertake vis-à-vis the proprietor of the patent not to make the sample available to any third party until the patent has ceased to have effect.

(4) As regards biological material derived from the sample which still exhibits the characteristics of the deposited sample essential to carrying out the invention, the person requesting the furnishing of the sample shall accept the same obligations as those applying to the sample.

(5) Where the person requesting the furnishing of the sample is required to accept the said obligations, that shall be effected by submission of a separate declaration accompanying the request.

34.-(1) A request under section 22(7) of the Patents Act to the effect that the furnishing of a sample shall only be effected to an expert in the art shall be submitted to the Patent and Trademark Office not later than on the date on which the application is made available to the public under section 22 of the Patents Act.

(2) The Patent and Trademark Office shall draw up a list of suitable persons who have declared their willingness to undertake the commission as an expert in the art and who are qualified therefor. Entries of persons on the list of experts shall be advertised. It shall also be advertised if persons are deleted from the list.

(3) If the furnishing of a sample may only be effected to an expert in the art, cf. subsection 1, the request for a sample shall indicate the expert to be used. At the filing the request shall be accompanied by a separate declaration from the expert in which he accepts the obligations vis-à-vis the applicant to the extent referred to in section 33(2) and (4). In those cases the requester shall not be required to make any declaration himself.

(4) Any person entered on the list or any person approved by the applicant in the individual case may be used as an expert.

35.- Notwithstanding any declaration made under sections 33 and 34, a sample derived from a furnished sample may be deposited for the purpose of a new patent application or a utility model application, if the deposit of the derived sample is required for that application.

36.-(1) If a request has been submitted for the furnishing of a sample, and if under the Patents Act or this Order there is nothing to prevent the furnishing of the sample, the Patent and Trademark Office shall issue a certificate to that effect. The Patent and Trademark Office shall send the request for the furnishing of a sample and the certificate to the depositary institution with which the sample is deposited. At the same time, the

Patent and Trademark Office shall send a copy of the request and the certificate to the applicant or the proprietor of the patent.

(2) If the Patent and Trademark Office finds that the certificate referred to in subsection 1 cannot be issued, the Patent and Trademark Office shall notify the person who has requested the furnishing of the sample accordingly.

## Chapter 10

### *Examination as to patentability*

37.-(1) In examining whether the conditions laid down in section 2 of the Patents Act for the grant of a patent are complied with, the Patent Authority shall consider everything that comes to its attention.

(2) If deemed necessary, the examination shall also be based on other available information.

38.-(1) If the applicant wishes the search referred to in section 9 of the Patents Act to be performed, he shall, within 3 months from the date of filing of the application, or from the date on which the application is deemed to have been filed, file a request to that effect and pay the fee prescribed by the Searching Authority and a fee for the handling of the application by the Patent and Trademark Office.

(2) If the applicant wishes the search to be performed by a specific international authority out of several possible authorities, he shall specify that in the request.

(3) If the patent application is not written in a language accepted by the Searching Authority, the request shall be accompanied by a translation of the application into a language approved by the Searching Authority. If the Nordic Patent Institute is stated in the request, the application shall be translated into Danish, English, Icelandic, Norwegian or Swedish. If the Swedish Patent Office is stated in the request, the application shall be translated into Danish, Swedish or English, and if the European Patent Office is stated in the request, the

application shall be translated into English, French or German.

(4) If at the expiry of the time limit referred to in subsection 1 the patent application and the prescribed translation do not comply with the requirements as to form which apply to international applications, the request shall be deemed to be withdrawn.

39.-(1) If the Patent and Trademark Office has informed the applicant that an application relates to two or more mutually independent inventions in contravention of section 10 of the Patents Act, the application shall not be restricted to relate first to one invention and then, if that proves not to be patentable, be amended to relate to another of the inventions. Neither shall the application be related in parallel to several of the inventions.

(2) When the claims have been restricted due to lack of unity, the applicant shall be deemed in the application in question finally to have waived the invention or inventions deleted from the claims by the restriction.

40.- For the purpose of the examination and other processing of the application the Patent Authority may consult other experts.

41.- The Patent Authority may require the applicant to submit a model, sample or the like or to have investigations or experiments carried out.

42.-(1) If the applicant has also applied for a patent for the same invention abroad, the Patent Authority may, with the limitation specified in section 69(3), 2nd sentence, of the Patents Act, require the applicant to furnish information about any communication from the patent institution in question concerning the novelty of the invention or its patentability in other respects.

(2) The applicant shall, to the extent required by the Patent Authority, indicate the patent

institutions with which he has applied for a patent for the invention and file a copy or a transcript of the communications with the said patent institutions as regards the novelty of the invention or its patentability in other respects. If the applicant has not received any such communication, the applicant shall submit a declaration to that effect.

43.- If, during the examination and other processing of a patent application, information of importance to the examination of the application is filed, the applicant shall be notified thereof. The person who has submitted such information shall, where relevant, be notified of the opportunity to file an opposition if and when a patent is granted.

### **Part III**

#### **Grant of patents, etc.**

##### **Chapter 11**

##### *Grant of patents*

44.-(1) If the Patent Authority finds that a patent may be granted, and if it has not already been established that the applicant approves the text in which the patent may be granted, subsections 2 and 3 shall apply.

(2) The Patent Authority shall invite the applicant within 2 months to file his observations on the text in which patent may be granted. If the applicant approves the text, section 19 of the Patents Act shall apply.

(3) If the applicant disapproves of the text, the examination and other processing of the application may be continued. If the Patent Authority finds no reason to continue the examination and other processing, the application shall be refused. The invitation according to subsection 2 shall state that the application may be refused if the applicant disapproves of the text.

45.-(1) If, at the notification to the applicant under section 19(1) of the Patents Act, documents suitable for reproduction are not available, the applicant shall file such docu-

ments within 2 months after the forwarding of the notification.

(2) The documents for reproduction shall be in conformity with the documents accepted for the grant of the patent. The applicant shall submit a declaration to that effect.

46.- Postponement of the grant of a patent shall only be permitted in the cases where the decision to grant the patent has been made before the application was made available to the public pursuant to section 22(2) and (3) of the Patents Act. If so, the grant of the patent may at the request of the applicant be postponed until the time when the application is made available to the public pursuant to the said provisions.

47.- Publication of the description, drawings, photographs, claims and abstract pursuant to section 20 of the Patents Act (the patent specification) shall be effected at the instance of the Patent and Trademark Office and shall be initiated as soon as possible after the grant of the patent. The patent specification shall state the date of the grant of the patent and:

- (i) the number of the application and the registration number of the patent,
- (ii) the classes of the patent,
- (iii) the name or firm name and postal address of the proprietor of the patent,
- (iv) if the proprietor of the patent is represented by an agent, the name or firm name of the agent,
- (v) the name and postal address of the inventor,
- (vi) the title of the patent,
- (vii) if the application was
  - (a) a Danish patent application, its date of filing and, if the effective date is different from the date of filing, also the effective date,
  - (b) an international application, the international filing date and the date on which the application was proceeded

with under section 31 of the Patents Act or is deemed to have been filed under section 38(3) of the Patents Act, and the international application number,

(c) a converted European patent application, the number of the European patent application, its date of filing under the European Patent Convention and the date on which the European patent application was converted into a Danish patent application,

(viii) if priority is claimed under section 6 of the Patents Act, information as to where the application serving as a basis for claiming priority was filed and the date of filing and number of that application,

(ix) if the application is resulting from division or excision, the number of the parent application,

(x) if the patent comprises the deposit of a sample of biological material, information to that effect,

(xi) the date on which the files of the application were made available to the public, and

(xii) cited documents.

48.- The advertisement of the grant of a patent to be effected under section 20 of the Patents Act shall contain the data to be indicated in the patent specification under section 47 with the exception, however, of cited documents.

## Chapter 12

### *The Register of Patents*

49.- The Patent and Trademark Office shall keep a register of the patents granted in this country and of European patents having effect in this country.

50.- With respect to patents granted in this country, the following data shall be entered in the Register of Patents:

- (i) the number of the application and the registration number of the patent,
- (ii) the classes of the patent,
- (iii) the name or firm name and postal address of the proprietor of the patent,
- (iv) if the proprietor of the patent is represented by an agent, the name or firm name and postal address of the agent,
- (v) the name and postal address of the inventor,
- (vi) the title of the invention,
- (vii) if the patent is granted on the basis of
  - (a) a Danish patent application, the date of filing of the application and, if the effective date is different from the date of filing, also the effective date,
  - (b) an international application, the international filing date and the date on which the application was proceeded with under section 31 of the Patents Act or the date on which the application is deemed to have been filed under section 38(3) of the Patents Act, and the number of the international application,
  - (c) a converted European patent application, the number of the European patent application and its date of filing under the European Patent Convention as well as the date on which the European patent application was converted into a Danish patent application,
- (viii) if priority is claimed under section 6 of the Patents Act, information as to where the application serving as a basis for claiming priority was filed and the date of filing and number of that application,
- (ix) if the patent is granted on the basis of an application resulting from division or excision, the number of the parent application,
- (x) if the patent comprises the deposit of a sample of biological material, a statement of the institution with which the sample is deposited and the number accorded to the deposited sample by the institution,

(xi) the date on which the files of the application were made available to the public, and

(xii) the date on which the grant of the patent was advertised under section 20 of the Patents Act.

51.-(1) European patents designating Denmark shall be entered in the Register of Patents when the European Patent Office has published the grant of the patent and the proprietor of the patent in due time has filed the prescribed translated text and paid the prescribed fee under section 77(1), 1st sentence, of the Patents Act.

(2) If the requirements referred to in subsection 1 have been complied with, the following data shall be entered in the Register:

- (i) the date on which the European Patent Office has published the grant of the patent,
- (ii) the date on which the translation was filed and the fee was paid under section 77(1) and (2) of the Patents Act and the date on which the advertisement thereof was effected,
- (iii) the date accorded as the date of filing of the application and, if the application is a European divisional application, the date on which the divisional application was filed, and
- (iv) information corresponding to the data specified in section 50(i) to (vi), (vii)(b), (viii), (x) and (xi).

(3) If the European Patent Office has published its decision to maintain a European patent designating Denmark in amended form, the date of that publication shall be entered in the Register. If the proprietor of the patent, within the time limit prescribed in section 77(1) of the Patents Act, files a new translation and pays the fee therefor under section 77(2) of the Patents Act, the date on which that occurred and the date on which the amendment was advertised by the Patent and Trademark Office shall be entered in the Register.

(4) If the translation and the fee referred to in subsection 3 are not received within the time limit prescribed in section 77(1) of the Patents Act, an entry to that effect shall be made in the Register.

(5) If the European Patent Office has restricted or revoked a European patent designating Denmark, an entry to that effect shall be made in the Register.

(6) If the proprietor of the patent files a corrected text and pays the fee under section 86(1) of the Patents Act, the date on which that occurred and the date on which the correction was advertised shall be entered in the Register.

52.-(1) When a renewal fee has been paid, an entry to that effect shall be made in the Register of Patents or in a special register of fees annexed thereto.

(2) If a patent has lapsed under section 51 of the Patents Act, the date as from which the patent has lapsed shall be entered in the Register.

(3) If a request has been filed under section 72 of the Patents Act to the effect that a renewal fee shall be deemed to have been paid in due time, an entry to that effect shall be made in the Register, and an entry shall also be made concerning the decision on the request.

53.-(1) If the Patent and Trademark Office is notified that proceedings have been instituted for the revocation of a patent, for the transfer of a patent, or for a compulsory licence, cf. section 63(1) of the Patents Act, an entry to that effect shall be made in the Register.

(2) When an office copy of a court decision has been sent to the Patent and Trademark Office under section 65 of the Patents Act, an entry to that effect shall be made in the Register of Patents. When the court decision is final, the entry shall be made in such a way that the principal outcome of the case appears from the Register.

(3) If the Patent and Trademark Office under section 54 of the Patents Act has declared a

patent to have ceased to have effect in its entirety, an entry to that effect shall be made in the Register.

54.-(1) The entry made on the filing of an opposition, a request for administrative re-examination and a request for termination, cf. Part IV, shall contain:

(i) the name or firm name and postal address of the opponent or the person having submitted the request, respectively,

(ii) if the opponent or the person having submitted the request is represented by an agent, the name or firm name and postal address of the agent,

(iii) the date of the opposition or the request for administrative re-examination or termination, and

(iv) with respect to a request for termination, the number of the Community patent or European patent which is considered to cover the same invention.

(2) The decision on an opposition, a request for administrative re-examination or a request for termination shall be entered in the Register of Patents, cf. sections 63, 74(2) and 83(2). The entry shall state the result of the decision and the date on which the decision is advertised.

55.-(1) An entry under section 44 of the Patents Act concerning the transfer of a patent, the grant of a licence, pledging or levying of execution or commencement of insolvency proceedings against the proprietor of a patent shall contain the name or firm name and postal address of the holder of the right in question as well as the date of the creation of the right. As far as licences are concerned, an entry shall also be made, if so requested, as to whether the right of the proprietor of the patent to grant additional licences is restricted. An entry under section 44 of the Patents Act to the effect that insolvency proceedings has been commenced against the proprietor of a patent shall in addition to the entry concerning the insolvency proceedings contain the name and address of the trustee. If



the question concerning an entry cannot be decided upon immediately, it shall be stated in the Register that a request for an entry has been submitted.

(2) Any notification with respect to a patent as regards the change of agent or of the name or postal address of the proprietor of the patent shall be entered in the Register.

(3) A request for an entry as referred to in subsections 1 and 2 shall be filed with the Patent and Trademark Office and be accompanied by proper documentation for the change.

(4) If the Patent and Trademark Office with respect to a patent has received information about the transfer of deposited biological material as referred to in section 23(3) or has received a copy of the receipt for a new deposit as referred to in section 24(3), an entry concerning the transfer or the new deposit shall be made in the Register.

(5) If the Patent and Trademark Office has received information about the grant of a dependent compulsory licence, cf. section 46a of the Patents Act, an entry shall be made in the Register.

## **Part IV**

### **Opposition, administrative re-examination, termination**

#### **Chapter 13**

##### *Examination of oppositions*

56.-(1) The opposition shall be filed with the Patent and Trademark Office and shall include:

- (i) the opponent's name or firm name and postal address,
- (ii) the registration number of the patent against which the opposition is filed, the name or firm name of the proprietor of the patent and the title of the invention,
- (iii) a statement of the extent of the opposition filed and of all the grounds on which the opposition is based as well as a complete account of all the facts, evidence

and arguments presented in support of these grounds, and

(iv) if the opponent is represented by an agent, the name or firm name and postal address of the agent.

(2) The opposition shall be accompanied by the prescribed fee.

57.-(1) If the opposition does not comply with the provisions of section 56(1)(iii) and (2) before the expiry of the opposition period, the opposition shall be rejected. The same shall apply if the patent against which the opposition is filed is not identified in the opposition or if it cannot be established who has filed the opposition.

(2) If the opposition after the expiry of the opposition period does not comply with the provisions of section 56(1)(i) to (ii) and (iv), the opponent shall be invited to remedy the deficiency within 1 month. If the opposition is not corrected in time, it shall be rejected.

(3) An entry of the filing of the opposition shall be made in the Register of Patents. An advertisement of the filing of the opposition shall be effected pursuant to section 64 when the opposition period has expired if the opposition is not rejected.

58.- The Patent and Trademark Office may, if so requested by the opponent, decide that the proprietor of the patent shall file a translation of the entire patent specification into Danish if the patent specification has been published in English with claims in Danish.

59.-(1) A copy of the opposition and the accompanying documents shall be forwarded to the proprietor of the patent, who, after expiry of the opposition period and unless the opposition is rejected, shall be invited to file his observations on the opposition and, where appropriate, file the description, claims, drawings and photographs in amended form within 6 months. If more than one opposition has been filed, the opponents shall be informed thereof after expiry of the

opposition period by the forwarding of a copy of the other oppositions and a copy of the invitation to the proprietor of the patent referred to above.

(2) If the proprietor of the patent files a reply to the opposition, the Patent Authority shall decide whether further communication between the parties is required. The parties shall be informed of that decision. With respect to the opponents a copy of the reply filed by the proprietor of the patent shall be enclosed.

60.- If the Patent Authority decides to revoke the patent, the parties shall be notified thereof. The same shall apply if the Patent Authority decides to maintain the patent unamended.

61.-(1) If the Patent Authority finds that the patent may be maintained in amended form, the parties shall be notified thereof. At the same time the proprietor of the patent shall be invited to file an amended text within two months. On the basis of the received text the Patent Authority shall consider whether the patent may be maintained as so amended. The proprietor of the patent shall be invited to file his observations within two months if he does not approve the text in which the patent is intended to be maintained.

(2) If the proprietor of the patent approves the text, the Patent Authority shall decide to maintain the patent in the amended form. The opponent shall be notified thereof.

(3) If the proprietor of the patent disapproves of the text, the examination of the opposition may be continued if the Patent Authority finds that there is reason to do so. If there is no reason to continue the examination, the patent shall be revoked.

(4) When a final decision to maintain the patent in amended form has been made, the proprietor of the patent shall be invited within 2 months to pay the fee for publication of a new patent specification and, if necessary, to file documents suitable for reproduction. The documents shall be in conformity with those accepted by the Patent Authority, and the proprietor of the patent

shall submit a declaration to that effect. If the publication fee is paid, the proprietor of the patent shall in any circumstances be considered to have approved the maintenance of the patent in the amended form. If on the other hand the publication fee is not paid, the patent shall be revoked.

(5) The decision to maintain a patent in amended form shall state the text in which the patent is maintained.

62.- The publication of a new patent specification with the description, drawings, photographs and claims in the amended form under section 23 of the Patents Act shall be effected at the instance of the Patent and Trademark Office and shall be initiated as soon as possible after the publication fee has been paid. The patent specification shall also include the information stated in section 47. Section 9(2) shall apply *mutatis mutandis*.

63.- The advertisement of the decision on the opposition under section 23(5) of the Patents Act shall be effected when the opposition has been finally decided on. At the same time, the decision shall be entered in the Register of Patents.

64.- The advertisement of the filing of an opposition and of the decision thereon shall state the name or firm name of the proprietor of the patent, the date of filing and the number of the application, the registration number and classes of the patent, the title of the invention and the date on which the patent was granted. The advertisement of the filing of an opposition shall also state the name or firm name of the opponent.

## Chapter 14

### *Administrative re-examination*

65-(1) A request for administrative re-examination shall be filed with the Patent and Trademark Office and shall include:

(i) the name or firm name and postal address of the person making the request for re-examination,

(ii) the registration number of the patent with respect to which re-examination is requested, as well as the name or firm name of the proprietor of the patent and the title of the invention,

(iii) a statement of the extent of the re-examination requested and of all the grounds on which the request is based as well as a complete account of all the facts, evidence and arguments presented in support of these grounds, or, if the request is made by the proprietor of the patent, the desired amendments,

(iv) if the person requesting the re-examination is represented by an agent, the name or firm name and postal address of the agent, and

(v) if licensees are entered in the Register of Patents, documentation to prove that such licensees have been notified that re-examination has been requested.

(2) The request for re-examination shall be accompanied by the prescribed fee.

66.-(1) If the request for re-examination does not comply with the provisions of section 53b(1), 3rd sentence, of the Patents Act and section 65(2) of this Order, or if it cannot be established who made the request, the request shall be rejected.

(2) If the request for re-examination does not comply with the provisions of section 65(1), the person having made the request shall be invited to remedy the deficiencies within 1 month. If the request is not corrected in due time, it shall be rejected.

(3) An entry of the filing of a request for re-examination shall be made in the Register of Patents. An advertisement of the filing of a request for re-examination shall be effected pursuant to section 74 if the request is not rejected.

67.- The Patent and Trademark Office may, if so requested by the person requesting the re-examination, decide that the proprietor of the patent shall file a translation of the entire patent specification into Danish if the patent specification has been published in English with claims in Danish.

*Request for re-examination by persons other than the proprietor of the patent*

68.-(1) A copy of the request for re-examination and the accompanying documents shall be forwarded to the proprietor of the patent who shall be invited to file his observations on the request and, where appropriate, to file the description, claims, drawings and photographs in amended form within 6 months.

(2) If the proprietor of the patent files a reply to the request for re-examination, the Patent Authority shall decide whether further communication between the parties is required.

69.-(1) If the Patent Authority does not find that the grounds invoked for revocation are applicable, the request for re-examination shall be refused, and the patent shall be maintained unamended.

(2) If the grounds invoked for revocation are applicable, the Patent Authority shall then examine whether the patent, in view of the grounds for revocation referred to in section 52(1) of the Patents Act, may be maintained in amended form or shall be revoked.

(3) The examination shall be made on the basis of the material produced in connection with the request for re-examination, the material which pursuant to sections 37 to 43 was available when the patent was granted and any other material which might have been produced in connection with a previous amendment of the patent.

70.- If the Patent Authority decides to revoke the patent, the parties shall be notified thereof. The same shall apply if the Patent Authority decides to maintain the patent unamended.

71.-(1) If the Patent Authority finds that the patent may be maintained in amended form, the parties shall be notified thereof. At the same time, the proprietor of the patent shall be invited to file an amended text within two months. On the basis of the received text the Patent Authority shall consider whether the patent may be maintained as so amended. The proprietor of the patent shall be invited to file his observations within two months if he does not approve the text in which the patent is intended to be maintained.

(2) If the proprietor of the patent approves the text, or if the proprietor of the patent does not file any observations, the Patent Authority shall decide to maintain the patent as amended. The proprietor of the patent shall be notified thereof, and at the same time the proprietor of the patent shall be invited within 2 months to pay the fee for publication of a new patent specification and, if necessary, to file documents suitable for reproduction. The documents shall be in conformity with those accepted by the Patent Authority, and the proprietor of the patent shall submit a declaration to that effect. If the publication fee is not paid, the patent shall be revoked.

(3) If the publication fee is paid, a new patent specification shall be drawn up. The decision shall then be advertised, and at the same time the person having requested the re-examination shall be notified of the decision.

(4) If the proprietor of the patent disapproves of the text, the examination of the request may be continued if the Patent Authority finds that there is reason to do so. If there is no reason to continue the examination of the request, the patent shall be revoked.

(5) The decision to maintain a patent in amended form shall state the text in which the patent is maintained.

*Request for re-examination by the proprietor of the patent*

72.-(1) If the proprietor of the patent himself requests that his patent be restricted, the Patent Authority shall only examine whether

the grounds for revocation referred to in section 52(1) of the Patents Act prejudice the desired amendment of the patent.

(2) If the patent can be amended as desired, the proprietor of the patent shall be notified thereof. He shall then within 2 months file the description, claims, drawings and photographs in the amended form suitable for reproduction. The documents shall be in conformity with those accepted by the Patent Authority, and the proprietor of the patent shall submit a declaration to that effect. The proprietor of the patent shall moreover pay the publication fee within the same time limit. If the fee is not paid in due time, the patent shall cease to have effect.

(3) If the patent cannot be amended as desired, where appropriate after communication in that respect, the request shall be refused, and the patent shall be maintained unamended.

*Publication and advertisement, etc.*

73.- The publication of a new patent specification with the description, drawings, photographs and claims in the amended form pursuant to section 53f of the Patents Act shall be effected at the instance of the Patent and Trademark Office and shall be initiated as soon as possible after the publication fee has been paid. The patent specification shall also include the information stated in section 47. Section 9(2) shall apply *mutatis mutandis*.

74.-(1) The advertisement of the filing of and the decision on a request for re-examination shall state the name or firm name of the proprietor of the patent, the date of filing and the number of the application, the registration number and classes of the patent, the title of the invention and the date on which the patent was granted. The advertisement of the filing of a request for re-examination shall also state the name or firm name of the person requesting the re-examination.

(2) An entry of the decision shall be made in the Register of Patents.

## Chapter 15

### *Request for termination of a patent*

75.-(1) A request for a decision by the Patent Authority on the entire or partial termination of a patent under section 96 of the Patents Act shall be filed with the Patent and Trademark Office and shall include:

- (i) the name or firm name and postal address of the person making the request for termination of the patent,
- (ii) the registration number of the patent which shall cease to have effect as well as the name of the proprietor of the patent and the title of the invention,
- (iii) the number of the Community patent or European patent for Denmark which is considered to cover the same invention as the patent,
- (iv) if the person making the request for termination of a patent is represented by an agent, the name or firm name and postal address of the agent, and
- (v) if licensees are entered in the Register of Patents, documentation to prove that such licensees have been notified that termination of the patent has been requested.

(2) The request for termination shall be accompanied by the prescribed fee.

76.-(1) If the request for termination does not comply with section 75(2), or if it cannot be established who made the request, the request shall be rejected.

(2) If the request for termination does not comply with the provision in section 75(1), the person having made the request shall be invited to remedy the deficiencies within 1 month. If the request is not corrected in due time, it shall be rejected.

(3) An entry of the filing of a request for termination shall be made in the Register of Patents. The advertisement of the filing of a request for termination shall be effected pursuant to section 83 if the request is not rejected.

### *Request for termination by persons other than the proprietor of the patent*

77.-(1) A copy of the request for termination and the accompanying documents shall be forwarded to the proprietor of the patent who shall be invited to file his observations on the request and, where appropriate, to file the description, claims, drawings and photographs in amended form within 6 months.

(2) If the proprietor of the patent files a reply to the request, the Patent Authority shall decide whether further communication between the parties is required.

78.-(1) The Patent Authority shall examine whether and to which extent the conditions for termination under section 96(1) of the Patents Act are fulfilled.

(2) If the conditions for partial termination under section 96(1) of the Patents Act are fulfilled, the Patent Authority shall examine whether the national patent in consideration of the grounds for revocation referred to in section 52(1) of the Patents Act may then be maintained in amended form or shall be declared to have ceased to have effect in its entirety. The examination shall be made on the basis of the material which pursuant to sections 37 to 43 was available when the patent was granted and any other material which might have been produced in connection with a previous amendment of the national patent.

79.-(1) If the conditions for entire termination under section 96(1) of the Patents Act are fulfilled, the national patent shall be declared to have ceased to have effect in its entirety.

(2) If the conditions under section 96(1) of the Patents Act are not fulfilled, the request shall be refused, and the national patent shall be maintained unamended.

(3) The parties shall be notified of the decision of the Patent Authority under subsections 1 and 2.

80.-(1) If the Patent Authority, where the conditions for termination are fulfilled, finds that the national patent may be maintained in amended form, the parties shall be notified thereof. At the same time the proprietor of the patent shall be invited to file his observations within 2 months if he disapproves of the text in which the Patent Authority intends to maintain the national patent.

(2) If the proprietor of the patent approves the text, the Patent Authority shall decide to maintain the patent as amended. The person who has requested termination shall be notified thereof.

(3) If the proprietor of the patent disapproves of the text, the examination of the request may be continued if the Patent Authority finds that there is reason to do so. If there is no reason to continue the examination, it shall be decided to maintain the patent as amended. The parties shall be notified thereof.

(4) When a final decision has been made to maintain the patent in amended form, the proprietor of the patent shall be invited within 2 months to pay the fee for publication of a new patent specification and, if necessary, to file documents suitable for reproduction. The documents shall be in conformity with those accepted by the Patent Authority, and the proprietor of the patent shall submit a declaration to that effect. If the publication fee is paid, the proprietor of the patent shall be considered to have approved the maintenance of the patent as amended. If, on the other hand, the publication fee is not paid, the patent shall be declared to have ceased to have effect.

(5) The decision to maintain a patent in amended form shall state the text in which the patent is maintained.

*Request for termination by the proprietor of the patent*

81.- If the request for termination is made by the proprietor of the patent himself, sections 75 to 80 shall apply with the modifications

following from the proprietor of the patent being the only party to the case.

*Publication and advertisement, etc.*

82.- The publication of a new patent specification under section 96(2) of the Patents Act with the description, drawings, photographs and claims in amended form shall be effected at the instance of the Patent and Trademark Office and shall be initiated as soon as possible after the publication fee has been paid. The patent specification shall also include the information stated in section 47.

83.-(1) The advertisement of the filing of and the decision on a request for termination shall state, both in respect of the national patent and of the corresponding Community patent or European patent, the name or firm name of the proprietor of the patent, the date of filing and the number of the application, the registration number and classes of the patent, the title of the invention, the date when the patent was granted and, where relevant, the date from which the national patent has ceased to have effect or been maintained in amended form.

(2) An entry of the decision shall be made in the Register of Patents.

## **Part V**

### **Supplementary protection certificates for medicinal products and plant protection products**

#### **Chapter 16**

#### *Applications for certificates and the Register of Certificates, etc.*

#### *Definitions*

84.-(1) A “certificate” means a supplementary protection certificate under Council Regulation (EEC) No. 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products or a supplementary protection certificate under Regulation (EC)

No. 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products.

(2) “Regulations” mean Council Regulation (EEC) No. 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products as amended by Regulation (EC) No. 1901/2006 of the European Parliament and of the Council of 12 December 2006 on medicinal products for paediatric use and amending Regulation (EEC) No. 1768/92, Directive 2001/20/EC, Directive 2001/83/EC and Regulation (EC) No. 726/2004 and Regulation (EC) No. 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products.

*Applications for certificates and their examination and other processing, etc.*

85.-(1) Applications for certificates and applications for an extension of the duration of certificates for medicinal products for paediatric use shall be filed with the Patent and Trademark Office. Application forms shall be provided free of charge by the Patent and Trademark Office.

(2) In addition to the items stated in Article 8 of the Regulations, the application shall, if a certificate is applied for by several persons jointly, and they are not represented by an agent, state whether any of the applicants shall be authorised to receive communications from the Patent Authority on behalf of all the applicants. If no recipient is stated, the applicant stated first shall receive communications from the Patent Authority on behalf of all the applicants.

(3) In the application for a certificate the applicant shall give information about the identity of the product.

(4) The application fee shall accompany the application.

(5) The number and date of filing of the application shall be advertised together with the

information referred to in Article 9(2) of the Regulations.

(6) The date of the signature of the authorisation to place the product on the market by the Public Health Authorities shall be regarded as the date of the grant of the authorisation to place the product on the market referred to in Article 8(1)(a)(iv), and Article 9(2)(d) of the Regulations.

86.- The application shall be drawn up in Danish or English. If a document accompanying the application is drawn up in any other language, a translation into Danish or English shall be filed unless the Patent and Trademark Office decides otherwise in the individual case. The Patent and Trademark Office may require that the translation be certified by a translator or in another specified approved manner.

87.- An application for a certificate shall not be amended in such manner that a certificate is applied for with respect to another product or to another basic patent.

88.-(1) The Patent and Trademark Office shall keep a record of applications filed. In the record the following data shall be entered:

- (i) the information referred to in Article 9(2)(a) to (e), of the Regulations,
- (ii) the number and date of filing of the application,
- (iii) if the applicant is represented by an agent, the name or firm name and postal address of the agent,
- (iv) communications received and fees paid in respect of the application, and
- (v) notifications and communications sent in respect of the application.

(2) The record and the files of the application shall be open to the public.

89.-(1) The Patent Authority shall consider everything that comes to its attention in the examination of the application.

(2) The Patent Authority shall not verify whether the conditions in Article 3(d) of the Regulations are complied with.

90.- The rules in section 15(2) and (3) and section 16 of the Patents Act shall apply to time limits under Article 10(3) of the Regulations. The prescribed fee shall be paid for resumption.

91.-(1) The advertisement concerning the grant of the certificate pursuant to Article 11(1) of the Regulations shall, in addition to the information stated therein, also contain information about the number and date of filing of the certificate application as well as the registration number of the certificate. The same shall apply to the advertisement of the grant of an extension of the duration of a certificate for medicinal products for paediatric use or a refusal thereof.

(2) A certificate shall contain the information referred to in subsection 1.

#### *The Register of Certificates, etc.*

92.-(1) The Patent and Trademark Office shall keep a register of certificates granted. The information referred to in section 91(1) and amendments thereof shall be entered in the Register. Information on matters referred to in sections 53 to 55 shall also be entered in the Register of Certificates.

(2) Information concerning transfers, pledging, execution, licences, etc. which has been entered or is entered with respect to the basic patent in the Register of Patents pursuant to sections 53 to 55 shall be entered in the Register of Certificates at the same time.

93.- If an application for a certificate or for an extension of the duration of a certificate for medicinal products for paediatric use is finally refused or shelved, that shall be

advertised together with the information referred to in section 85(6).

#### *Payment of renewal fees*

94.-(1) A renewal fee shall be paid for each year commenced after the expiry of the term of the basic patent.

(2) The renewal fee shall fall due on the last day of the month in which the fee year begins. The renewal fee may not be paid earlier than 3 months before the due date.

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

(4) The Patent and Trademark Office shall not be responsible for any loss of rights as a consequence of failure to collect renewal fees.

#### Chapter 17

##### *Administrative re-examination of certificates, etc.*

##### *Administrative re-examination, cf. Article 15 of the Regulations*

95.-(1) The request for administrative re-examination shall be filed with the Patent and Trademark Office and shall include:

- (i) the name or firm name and postal address of the person making the request for re-examination,
- (ii) the registration number of the certificate for which re-examination is requested, and the name or firm name of the holder of the certificate,
- (iii) all the grounds in Article 15(1) of the Regulations on which the request is based, and a complete account of all the facts, evidence and arguments presented in support of these grounds,
- (iv) if the person making the request for re-examination is represented by an agent, the name or firm name and postal address of the agent, and
- (v) if licensees are entered in the Register of Certificates, documentation to prove that



such licensees have been notified that re-examination has been requested.

(2) If the request is based on grounds stated in Article 15(1)(c) of the Regulations, re-examination of the basic patent shall be requested at the same time, cf. section 97.

(3) The request for re-examination shall be accompanied by the prescribed fee.

(4) If the request for re-examination does not comply with the provision in subsection 3, or if it cannot be established who made the request, the request shall be rejected.

(5) If the request for re-examination does not comply with the provisions of subsection 1 or 2, the person having made the request shall be invited to remedy the deficiencies within 1 month. If the request is not corrected in due time, it shall be rejected.

(6) An entry of the filing of a request for re-examination shall be made in the Register of Certificates. An advertisement of the filing of a request for re-examination shall be effected pursuant to section 103 if the request is not rejected.

96.-(1) If a request for re-examination of the certificate is based on the grounds stated in Article 15(1)(a) or (b) of the Regulations, subsections 2 and 3 shall apply.

(2) A copy of the request for re-examination and the accompanying documents shall be forwarded to the holder of the certificate who shall be invited to file his observations on the request within 6 months. If the holder of the certificate files a reply to the request for re-examination, the Patent Authority shall decide whether further communication is required.

(3) When the Patent Authority finds that no further communication between the parties is required, the Patent Authority shall decide whether the request for re-examination may be complied with. If the request cannot be complied with, it shall be refused. If the request can be complied with, the certificate shall be revoked.

97.-(1) If a request for re-examination of the certificate is based on the grounds stated in Article 15(1)(c) of the Regulations, a request for re-examination of the basic patent shall also be filed, cf., however, subsections 3 to 5. The request for re-examination of the basic patent shall state that a re-examination of the certificate has also been requested.

(2) A request for re-examination of the basic patent shall be examined pursuant to the rules in sections 65 to 72. In the notification to the proprietor of the patent under section 68, he shall be informed that re-examination of the certificate has also been requested. The examination of the request for re-examination of the certificate shall be suspended until the re-examination of the basic patent has been finally settled. After that section 98 shall apply.

(3) If the request is based on the sole ground that the product is no longer covered by the claims of the basic patent, the Patent Authority shall make its decision in accordance with section 98(2) without any further examination of the basic patent.

(4) If the period prescribed for the filing of oppositions against the basic patent has not expired, or if an opposition is filed against the basic patent, the Patent Authority shall suspend the examination of the request for re-examination of the certificate until the opposition period has expired or until the opposition has been finally decided on. The examination of the request for re-examination of the certificate shall be suspended until the re-examination of the basic patent has been finally settled. After that section 98 shall apply.

(5) If re-examination or termination of the basic patent has been requested prior to the request for re-examination of the certificate, the request for re-examination of the certificate shall be suspended until a final decision concerning the basic patent has been made. The examination of the request for re-examination of the certificate shall be suspended until the re-examination of the basic patent has been finally settled. After that section 98 shall apply.

98.-(1) If a final decision has been made to revoke the basic patent or to declare it to have ceased to have effect, the Patent Authority shall revoke the certificate under Article 15 of the Regulations.

(2) If a final decision has been made to maintain the basic patent in amended form, the Patent Authority shall, after having given the parties an opportunity to file their observations, decide whether the product for which the certificate has been granted is still protected by the basic patent. If that is not the case, the certificate shall be revoked.

(3) If the request for re-examination of the certificate cannot be complied with, it shall be refused, and the certificate shall be maintained.

*Administrative re-examination of the  
duration of the certificate*

99.-(1) Any person shall be entitled, against payment of the prescribed fee, to file with the Patent Authority a request for re-examination of the duration calculated for the certificate.

(2) Section 95 shall apply, provided that in the case of a request for re-examination of the duration of the certificate reference shall be made to grounds in Article 13 of the Regulations.

(3) If a request for re-examination has been filed by another person than the holder of the certificate, a copy of the request and the accompanying documents shall be forwarded to the holder of the certificate, who shall be invited to file his observations within 2 months. If the holder of the certificate files a reply, the Patent Authority shall decide whether further communication between the parties is required.

(4) When the Patent Authority finds that no further communication is required, the Patent Authority shall decide whether the request for re-examination may be complied with. If the request cannot be complied with, it shall be refused. If the request can be complied with, the Patent Authority shall change the duration.

*Administrative re-examination of the  
extension of the duration of a certificate, cf.  
Regulation No. 1768/92 of 18 June 1992  
concerning the creation of a supplementary  
protection certificate for medicinal products,  
Article 15a*

100.- Sections 95 to 99 shall apply *mutatis mutandis* to the extension of the duration of a certificate for medicinal products for paediatric use under Article 15a in Council Regulation (EEC) No. 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products.

*Advertisement and entry in the Register of  
Certificates concerning re-examination*

101.-(1) The advertisement concerning the filing of and the decision on a request for re-examination shall state the name or firm name of the holder of the certificate, the number and date of filing of the application, the registration number of the certificate, the number and classes of the basic patent, the title of the invention and the duration of the certificate. The advertisement of the filing of a request for re-examination shall also state the name or firm name of the person who has requested the re-examination.

(2) An entry of the decision shall be made in the Register of Certificates.

*Re-establishment of rights*

102.-(1) The provisions of section 72 of the Patents Act shall apply to loss of rights as a consequence of failure to comply with a time limit specifically prescribed in the Regulations. Re-establishment of rights may also be granted when a certificate has lapsed under the provisions of Article 14(c) or (d) of the Regulations.

(2) The request for re-establishment of rights according to subsection 1 shall be filed with the Patent and Trademark Office and shall be accompanied by the prescribed fee.

(3) When a request under subsection 1 has been complied with, that shall be advertised.

## Part VI

### International applications and European applications and patents

#### Chapter 18

##### *Receipt of international applications, etc.*

103.-(1) The Patent and Trademark Office shall be the receiving Office for international applications from applicants who are Danish nationals and applicants who are residents of Denmark or have a commercial establishment in Denmark or who are legal entities recognised according to Danish law.

(2) If an international application is filed by two or more applicants, and if at least one of the applicants complies with the conditions in subsection 1, that subsection shall apply with respect to the filing of the application.

(3) If the applicant is not a resident of this country, he may appoint an agent residing in the European Economic Area (EEA) to represent him before the Patent and Trademark Office in all matters concerning the application.

104.-(1) In its capacity of receiving Office, the Patent and Trademark Office shall receive, check and transmit international applications in accordance with the Patent Cooperation Treaty and its Regulations.

(2) The applicant shall pay the following fees to the Patent and Trademark Office in its capacity of receiving Office:

(i) the basic fee referred to in Rule 15.1 of the Regulations under the Patent Cooperation Treaty within 1 month from the receipt of the application,

(ii) the designation fee referred to in Rule 15.1 of the said Regulations within 1 year from the international filing date of the application, or, if priority is claimed, from the date of priority, provided that in the latter case the fee may always be paid within 1 month from the receipt of the application,

(iii) the search fee referred to in Rule 16.1 of the said Regulations within 1 month from the receipt of the application,

(iv) the fee for the handling of the application by the Patent and Trademark Office as receiving Office (the transmittal fee) referred to in Rule 14 of the said Regulations within 1 month from the receipt of the application, and

(v) the confirmation fee referred to in Rule 15.5 of the said Regulations within 15 months from the international filing date of the application, or, if priority is claimed, from the date of priority.

(3) If any of the fees referred to in subsection 2 has not been paid in due time or at the expiry of the time limit has been paid in an insufficient amount, Rule 16bis of the said Regulations shall apply.

(4) The designation fee shall be paid not later than 6 months from the date of publication of the European search report.

105.-(1) The applicant may choose whether the Nordic Patent Institute, the Swedish Patent Office or the European Patent Office shall be the International Searching Authority with respect to the applications referred to in section 103(1). The application shall be filed in a single copy and may be filed in Danish, Swedish, Norwegian, Icelandic, German, French or English. The Nordic Patent Institute will accept applications in Danish, English, Icelandic, Norwegian and Swedish. The Swedish Patent Office will accept applications in Danish, Swedish, Norwegian or English. The European Patent Office will accept applications in English, German or French. The request as such shall, however, be in the language in which the application is to be published later on.

(2) If the application is not drawn up in any of the languages accepted by the chosen Searching Authority, cf. subsection 1, a translation into such a language shall be filed with the Patent and Trademark Office within 1 month from the date of receipt in accordance with Rule 12.3 of the Regulations under the Patent Cooperation Treaty.

(3) If the application is filed in a language which is not a language of publication, and if no translation is required under Rule 12.3(a) of the Regulations under the Patent Cooperation Treaty, the applicant shall within 14 months from the date of priority file a translation of the application with the receiving Office in a language of publication accepted by that Office in accordance with Rule 12.4 of the Regulations under the Patent Cooperation Treaty.

106.- The Patent and Trademark Office shall keep a separate record of international applications filed with it. The record shall not be open to the public.

107.- Provided that the international application is not comprised by the Secret Patents Act, the Patent and Trademark Office shall, in accordance with the Patent Cooperation Treaty and its Regulations, transmit the application to the International Bureau referred to in section 10.

## Chapter 19

### *Proceeding with international applications*

108.-(1) The provisions of section 8 shall apply *mutatis mutandis* with respect to the filing of a translation in connection with the proceeding with an international application under section 31 of the Patents Act and with the request for the review referred to in section 38(1) of the Patents Act.

(2) The Patent and Trademark Office may limit the obligation to file a translation in the cases where only part of an international application is proceeded with in this country. If a translation of only parts of an international application is filed, the applicant shall submit a declaration from which it appears which parts of the international application are not comprised by the translation. The declaration shall also state the reason for the omission.

109.- The time limit referred to in section 34 of the Patents Act shall expire 4 months after the expiry of the time limit prescribed in section 31(1) of the Act.

110.- If, with respect to an international application, the applicant has complied with the provisions of section 31 of the Patents Act, but the Patent and Trademark Office has not yet received notification from the International Bureau referred to in section 10 to the effect that the Bureau has received the application, the Patent and Trademark Office shall notify the Bureau thereof.

111.-(1) The time limit for presenting a request for a review under section 38(2) of the Patents Act shall expire 2 months after the date on which the receiving Office or the International Bureau referred to in section 10 has notified the applicant of such decision as referred to in section 38(1) of the Act.

(2) If the applicant proves that he has received the notification referred to in subsection 1 more than 7 days after the date of the notification, the time limit shall be extended by as many days in excess of 7 as have passed from the date of the notification till the date on which the applicant received the notification.

## Chapter 20

### *European patent applications and patents, etc.*

112.-(1) If a European patent application is filed with the Patent and Trademark Office, the Patent and Trademark Office shall mark the documents making up the application with the date of filing, issue a receipt for the documents and notify the European Patent Office of the filing, cf. Rule 35(2) and (3) of the Implementing Regulations to the European Patent Convention.

(2) Provided that the European application is not comprised by the Secret Patents Act, the Patent and Trademark Office shall, in accordance with Article 77 of the European Patent Convention and its Implementing

Regulations, forward the application to the European Patent Office.

113.- If the Patent and Trademark Office, under Article 136(2) of the European Patent Convention, receives a request for conversion from the applicant, the Patent and Trademark Office shall without delay transmit the request together with a copy of the application to the patent offices of the countries specified in the request.

114.-(1) If a European patent application is transmitted to the Patent and Trademark Office under Article 135 of the European Patent Convention, the Patent and Trademark Office shall notify the applicant thereof without delay.

(2) The application fee and the translation or, if the European application is drawn up in Danish, a copy of the application as required under section 88(1)(iii) of the Patents Act, shall be received by the Patent and Trademark Office within 3 months from the date on which the Patent and Trademark Office has sent the notification referred to in subsection 1 to the applicant.

(3) If the applicant has requested the novelty search and the examination as to patentability of the application on the basis of documents in English, cf. section 8(3), the translation referred to in subsection 2 shall be filed within 3 months from the date on which the Patent and Trademark Office has notified the applicant of the result of the search and examination.

115.-(1) The Patent and Trademark Office shall keep a separate record of European patent applications for which translations have been filed pursuant to sections 83 and 95 of the Patents Act. The record shall be open to the public.

(2) The number of the application with the European Patent Office, the name or firm name and postal address of the applicant, the date on which the translation or a corrected translation was received by the Patent and

Trademark Office and the date on which the filing of the translation or a corrected translation was advertised shall be entered in the record. Finally, the date which has been accorded as the date of filing of the application, the information referred to in section 6(2)(iv) to (vi), (xi) and (xiv) to (xv) and, if the application is a European divisional application, the date of filing of the divisional application shall be entered.

(3) If the prescribed text is filed, and the fee is paid in accordance with section 77(1) and (2) of the Patents Act, the date of filing and the date of the advertisement thereof under section 116 shall be entered in the record. The same shall apply to any correction of such a text received before the patent has been entered in the Register under section 51.

116.-(1) The translation of a European patent into Danish or English pursuant to section 77(1) of the Patents Act shall comprise the title of the invention, the description, including any drawings and photographs and any sequence listing necessary for the understanding of the invention, and the claims. The claims shall be submitted in Danish translation.

(2) The text filed pursuant to section 77(1) of the Patents Act shall be accompanied by a separate notification stating the number of the patent and the name or firm name and postal address of the proprietor of the patent.

(3) If the requirements of subsections 1 and 2 are not complied with, the text shall be deemed not to have been filed.

117.- The translation under sections 83 and 95 of the Patents Act shall be accompanied by a separate notification stating the number of the application and the name or firm name and postal address of the applicant. If that requirement is not complied with, the translation shall be deemed not to have been filed.

118.-(1) Advertisements concerning the receipt of text under section 77 of the Patents Act shall contain the information referred to in section 116(2), the classes of the patent application or the patent, the title of the invention, information about the date accorded as the date of filing of the application and the date on which the European Patent Office has published the grant of the patent or the maintenance of the patent in amended form and, if priority is claimed, where the previous application whose priority is claimed was filed and the date of filing and number of that application.

(2) Advertisements concerning translations under sections 83 and 95 of the Patents Act shall contain the information referred to in section 117 as well as information about the classes of the application, the title of the invention, the date accorded as the date of filing of the application and, if priority is claimed, where the previous application whose priority is claimed was filed and the date of filing and number of that application.

119.-(1) Correction of the translation under section 86 of the Patents Act shall be effected by filing a new copy of the complete translation with a clear indication of the corrections. The corrected version shall be accompanied by a separate notification stating the number of the patent or the application and the name and address of the proprietor of the patent or the applicant, respectively.

(2) If the requirements of subsection 1 are not complied with, the corrected translation shall be deemed not to have been filed.

(3) Advertisements under section 86(1) of the Patents Act shall contain the information referred to in section 113(2), the classes of the patent application or the patent, the title of the invention and information about the date on which the Patent and Trademark Office has received the corrected translation and the prescribed fee.

(4) Advertisements under section 86(2) of the Patents Act shall contain the information referred to in section 117, the classes of the application, the title of the invention and

information about the date on which the Patent and Trademark Office has received the corrected translation.

## **Part VII**

### **Miscellaneous provisions**

#### **Chapter 21**

#### *Miscellaneous provisions*

##### *Spare parts and accessories for aircraft*

120.- Notwithstanding a granted patent, spare parts and accessories for aircraft may be imported into this country and used for the repair of aircraft belonging to another State being a party to the Convention on International Civil Aviation of 7 December 1944 and either being a party to the Paris Convention for the Protection of Industrial Property of 20 March 1883 or having a patent legislation which recognises inventions made by nationals of another State which is a party to the first-mentioned Convention and protects such inventions by a legislation which is in principle in conformity with the Paris Convention.

#### *Advertisements*

121.- Advertisements shall be made in "Dansk Patenttidende" (the Danish Patent Gazette) issued by the Patent and Trademark Office.

#### *Power of attorney*

122.- If an applicant, a holder or a party to a case before the Patent and Trademark Office is represented by an agent, a power of attorney shall be filed. The Patent and Trademark Office may grant exemption from the requirement concerning a power of attorney.

#### *Languages*

123.-(1) The Patent and Trademark Office shall examine and process a case in English if the applicant so requests or if the parties to a case before the Patent and Trademark Office so agree. The Patent and Trademark

Office may at any time decide that the examination and other processing of a case shall be effected in Danish.

(2) Documents received in connection with a case before the Patent and Trademark Office shall be drawn up in Danish, English, Norwegian or Swedish. If the documents are drawn up in any other language, a translation shall be filed. The translation shall be certified by a translator or in another manner if the Patent and Trademark Office finds it necessary.

(3) If the examination and other processing of a case pursuant to sections 21 and 53b of the Patents Act result in an invitation from the Patent and Trademark Office to the proprietor of the patent to file an amended text, that text shall be filed in Danish or English before the expiry of a time limit to be specified by the Office. Amendments to the text concerning the claims shall be filed in Danish.

#### *Compulsory licence*

124.-(1) In the evaluation of the possibility of obtaining a compulsory licence under section 45(1) of the Patents Act, working within the European Communities or working in a state which has ratified or acceded to the Agreement on the European Economic Area (EEA) or the Agreement on the Establishment of the World Trade Organisation (WTO) shall be equivalent to working in this country.

(2) In the evaluation of the possibility of obtaining a compulsory licence under section 48 of the Patents Act, exploitation within the European Communities or exploitation in a state which has ratified or acceded to the Agreement on the European Economic Area (EEA) or the Agreement on the Establishment of the World Trade Organisation (WTO) shall be equivalent to exploitation in this country.

#### *Documentation for filed requests, etc.*

125.- For the purpose of examination and other processing of applications, etc. the

Patent and Trademark Office may, when deemed necessary, request the submission of further material in substantiation of filed requests, etc.

## **Part VIII**

### **Entry into force, transitional provisions**

#### **Chapter 22**

#### *Entry into force*

126.-(1) This Order shall enter into force on 11 February 2009.

(2) The provisions of sections 75 to 102 and sections 112 to 119 shall not apply to the Faeroe Islands and Greenland.

(3) At the same time Order No. 299 of 28 April 2008 on patents and supplementary protection certificates shall be repealed.

(4) The provisions of this Order relating to international preliminary examination under the Patent Cooperation Treaty have been put into force by Order No. 602 of 26 August 1988.

#### *Transitional provisions*

127.-(1) This Order shall also apply to patent applications which at its entry into force are pending before the Patent Authority with the following exceptions:

(i) Section 11 shall apply to applications filed after 31 December 1995.

(ii) Section 12(3) of Order No. 1193 of 23 December 1992 shall apply to applications filed before 1 January 1996.

(iii) The provision of section 19 shall apply to applications filed after 31 December 1992.

(iv) The provisions of this Order relating to the possibility for the Patent and Trademark Office to examine and process applications on the basis of English documents shall only apply to applications filed after 1 May 2008.

(v) Section 8(3) and section 123(3) shall apply to applications filed on or after 1 January 2009.

(2) Oppositions and requests for administrative re-examination filed before 8 February 1997 shall be finished pursuant to the previous rules.

*The Patent and Trademark Office, 29 January 2009*

JESPER KONGSTAD

/ Randi Stanbury