

The Patent and Trademark Office

Order No. 1605 of 8 December

2006

Order on the Examination and Other Processing of Utility Model Applications and Registered Utility Models

Pursuant to section 8(2), section 10(2), section 11(2), section 12(2), section 15(2) to (3), section 17, section 24(8) to (9), section 26(2), section 29, section 31, section 35(2), section 36(1) and (3), section 41(1), section 44, section 51 and section 64(1) to (3) of Act No. 1431 of 21 December 2005 on Utility Models, etc. and by authority under section 1 of Order No. 39 of 17 January 2002 it is laid down that:

Part 1

Filing and recording of utility model applications

1.-(1) Danish utility model 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 40 to 44.

(3) Unless otherwise provided, the provisions of this Order shall only apply to:

- (i) Danish utility model applications,
- (ii) international applications proceeded with under section 29 of the Utility Models Act or taken up for examination and other processing under section 35 of the Utility Models Act and European patent applications converted into Danish utility model applications pursuant to section 36 of the Utility Models Act.

2.-(1) A Danish utility model application shall indicate:

- (i) the applicant's name or firm name, postal address and, if the applicant is not rep-remented by an agent, telephone and fax number, if any,
- (ii) if the applicant is represented by an agent, the latter's name or firm name, postal address and telephone and fax number, if any,
- (iii) the creator's name and postal address,
- (iv) a brief and factual title of the claimed creation,
- (v) if the utility model registration is applied for by several applicants jointly, which of them shall be authorised to receive communications from the Patent Authority on behalf of all the applicants,

- (vi) if priority is claimed under section 11 of the Utility Models Act, the information required in section 9,
 - (vii) if a patent application is used as a basis for the utility model application, cf. section 12 of the Utility Models Act, the information required in section 13(4),
 - (viii) whether the applicant requests expedited registration, cf. section 24(2) of the Utility Models Act,
 - if the application comprises the deposit of a sample of biological material, cf. section 15 of the Utility Models Act, the information required in section 25 and
 - (x) the documents accompanying the application.
- (2) The documents accompanying the application shall include:
- (i) a description of the creation, including any drawings or photographs required for the understanding of the creation, utility model claims and an abstract and
 - (ii) if the applicant is represented by an agent, a power of attorney for the agent, unless a power of attorney is given in the application.
- (3) The Patent and Trademark Office may grant exemption from the requirement to provide a power of attorney.
- (4) The prescribed fee shall accompany the application.

3.-(1) A Danish utility model application shall be accorded a date of filing when the documents filed by the applicant contain:

- (i) an indication that utility model protection is applied for,
 - (ii) information about the name or firm name and postal address of the applicant and
 - (iii) a description, drawings or photographs, if referred to in the description, and one or several utility model claims.
- (2) If the application fee has not accompanied the application, it shall be paid before the expiry of a time limit prescribed by the Patent and Trademark Office. If the fee is not paid before the expiry of the time limit, the application shall be deemed not to have been filed, and the date of filing date shall no longer apply.

4.- A request for expediting the registration, cf. section 24(2) of the Utility Models Act, may be made any time on application to the Patent and Trademark Office.

5.-(1) At the filing of a utility model application the Patent and Trademark Office shall ensure that the requirements of the section 19 of the Utility Models Act are fulfilled.

- (2) The applicant may request the Patent and Trademark Office before registration to perform an examination to establish whether the creation is new and differ distinctly from the state of the art, cf. section 5 of the Utility Models Act. The request shall be accompanied by the prescribed fee.
- (3) A request pursuant to subsection 2 may be made in the application or be filed later.
- (4) If a request pursuant to subsection 2 is not accompanied by the prescribed fee, it shall be rejected.

6.-(1) The application, description, utility model claims and abstract shall be drawn up in Danish. Other documents may be drawn up in Danish, Norwegian or Swedish.

- (2) If a document is drawn up in another language than those prescribed in subsection 1, a translation shall be filed. The Patent and Trademark Office may abstain from requiring a translation of documents other than the description, utility model claims and abstract. The Patent and Trademark Office may also abstain from requiring a

translation of such parts of the description and utility model claims as are not included in the basic documents as defined in section 29. The Patent and Trademark Office may accept a translation into another language than those referred to in subsection 1. The translation may be required to be certified by a translator or in another specified manner.

The examination as to whether the application complies with the conditions laid down in section 5 of the Utility Models Act may be made on the basis of a description, utility model claims and an abstract in the Norwegian or Swedish language. In particular cases such an examination may be made on the basis of a description, utility model claims and an abstract in the English language if the applicant submits a request to that effect and pays the fee prescribed therefor. In both cases the Patent and Trademark Office shall not require the translation referred to in subsection 2 until the applicant has been notified of the result of the examination.

7.-(1) The description, utility model claims, abstract, drawings and photographs shall be presented in a quality suitable for reproduction.

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

8.-(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 name or firm name and postal address of the applicant,

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

(v) the name and postal address of the creator,

(vi) the title of the creation,

(vii) if the application is

(a) a Danish utility model application, its date of filing,

(b) an international application, the international filing date and the date on which the application was proceeded with under section 29 of the Utility Models Act or is deemed to have been filed under section 35(3) of the Utility Models Act and the number of the international application or

a converted European patent application under section 36 of the Utility Models Act, 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 utility model application,

(viii) if the application is made on the basis of

(a) a Danish patent application under section 12 of the Utility Models Act, the date of filing and number of the patent application,

(b) an international application under section 12 of the Utility Models Act, the number of the 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 of the Patents Act and the number of the Danish patent application,
- (c) a European patent application under section 12 of the Utility Models Act, the date of filing of the European patent application under the European Patent Convention and its number or
- (d) a converted European patent application under section 36 of the Utility Models Act, the number of the European patent application, 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 and the number of the Danish patent application,
- (ix) if priority is claimed under section 11 of the Utility Models Act, where the application serving as a basis for the priority claim was filed and the date of filing and number of that application,
- (xi) (x) if the application is resulting from division or excision, the number of the parent application, if the application comprises the deposit of a sample of biological material, information stating the institution with which the sample is deposited and the number which the institution has accorded to the deposited sample,
- (xii) whether the applicant has requested an examination, cf. section 19(2) of the Utility Models Act,
- (xiii) when new applications have resulted from division of or excision from the application, information to that effect and a statement of the numbers of those applications,
- (xiv) whether the applicant has requested expediting of the registration under section 24(2) of the Utility Models Act,
- (xv) if the application has been made available to the public under section 24(3) of the Utility Models Act, the date thereof,
- (xvi) documents received and fees paid in respect of the application and
- (xvii) notifications and communications sent in respect of the application.
- (3) The information referred to in subsection 2 shall be available to the public when the application has been made available to the public under sections 24 and 30(3) of the Utility Models Act.

Part 2

Types of applications

Applications claiming priority

- 9.-(1)** In order to obtain priority under section 11 of the Utility Models Act the applicant shall claim priority not later than one month after the date of filing of the application. The claim shall contain information as to where the application whose priority is claimed was filed, the date of filing of that application and, if it is an international application, additional information pursuant to Rule 4.10 of the Regulations under the Patent Cooperation Treaty. For a Danish utility model application, the applicant shall submit information about the number of the application whose priority is claimed as soon as that is available, though not later than two months after the applicant obtains knowledge of the number.
- (2) For an international application 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, the date of filing and the number of that application 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 of the priority date, 16 months from the changed priority date, whichever 16-month period expires first. It shall, however, be possible to submit such a notice up to four months from the international filing date.

(3) If an application is divided under section 15, the priority claim for the parent application shall also without any separate claim apply to new applications resulting therefrom.

(4) Withdrawal of a priority claim shall be effected by submission of a separate notice.

10.-(1) If the Patent Authority is not already in possession of or is able to obtain knowledge of documentation concerning the application whose priority is claimed, the Authority may demand that the priority claimed be documented by the filing of a certificate from the authority which received the original application. The certificate shall contain information about the date of filing of the application and the name or firm name of the applicant. The Patent Authority may also under the said circumstances demand that a copy of the application certified by the said authority be filed.

(2) If the applicant fails to file the said documentation within a time limit prescribed by the Patent Authority, the applicant's right of priority shall lapse.

(3) The provisions of subsections 1 to 2 shall apply *mutatis mutandis* to the processing by the Patent Authority of a request for examination under section 50 of the Utility Models Act.

(4) 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 be filed with the International Bureau referred to in section 9 or with the receiving Office or be requested transferred to the International Bureau in accordance with the same rule. If a copy of the application whose priority is claimed has been filed with the International Bureau, the Patent Authority may only require a copy and a translation thereof in accordance with Rule 17.2 of the Regulations under the Patent Cooperation Treaty.

(5) The documentation referred to in subsections 1 and 4 may be filed electronically.

11.-(1) For an earlier application to be capable of serving as a basis for priority under section 9, it shall be the first application in which the creation is disclosed.

(2) If the person who filed the first application has subsequently filed an application relating to the same creation 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 provided that it does not leave any rights outstanding or has served as a basis for a priority claim. If priority has been obtained on the basis of such a subsequent application, the earlier application may no longer serve as a basis for claiming priority.

12.- Priority may be claimed 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 utility model 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.

Utility model applications based on previously filed patent applications

13.-(1) A patent application for Denmark may be used in whole or in part as a basis for a utility model application relating to the same creation for up to ten years from the date of filing of the patent application or from the date which is deemed to be the date of filing. A patent application for Denmark shall mean:

- (i) a Danish patent application,
- (ii) an international application proceeded with in Denmark under section 31 of the Patents Act or taken up for examination and other processing under section 38(3) of the Patents Act,
- (iii) a European patent application in respect of which the European Patent Office has accorded a date of filing under the European Patent Convention and in which Denmark has been designated or
- (iv) a European patent application which has been converted into a Danish patent application under section 36 of the Utility Models Act.

(2) If a patent application is used as a basis for a utility model application pursuant to subsection 1, the utility model application shall be accorded the same date of filing as that applying to the patent application. A priority claim for the patent application shall also without any separate claim apply to the utility model application.

If an applicant wishes to use a patent application as a basis for a utility model application, the applicant shall, not later than two months after the patent application has been shelved without any possibility of resumption or has been finally refused by the Patent Authority, file a utility model application with a request to that effect.

(4) A request pursuant to subsection 3 shall contain information about the type of the patent application which is to be used as the basis for a utility model application, cf. sub-section 1(i) to (iv), as well as information about the date of filing of the patent application or the date which is deemed to be the date of filing and the number of the application.

(5) If the request pursuant to subsection 3 is not submitted in due time, the right to use the patent application as a basis for the filed utility model application shall lapse.

14.-(1) If a utility model application is resulting after splitting-off from or conversion of a European patent application, cf. section 13(1)(iii) of this Order or section 36 of the Utility Models Act, the applicant shall submit documentation for the basis for the request if the relevant information is not already available to the Patent Authority. At the filing of the application information shall be available about the date of filing of the patent application, the number of the patent application, the name or firm name of the applicant and information to the effect that Denmark is designated in the application.

(2) If the claimed patent application is drawn up in another language than those provided for in section 6(1), section 6(2) and (3) shall apply *mutatis mutandis*, unless the utility model application already constitutes the translation of the foreign-language patent application.

- (c) If the applicant fails to submit the documentation referred to in subsection 1 or a translation pursuant to subsection 2 within a time limit prescribed by the Patent and Trademark Office, the right to use the patent application as a basis for the filed utility model application shall lapse.

Applications based on division and excision

15.-(1) If several creations 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 a creation derived from the original application (the parent application) shall be deemed to have been filed at the same time as the parent application.

(2) If division is made in consequence of the fact that an application relates to two or more mutually independent creations, a new application shall in order to be considered to have been filed at the same time as the parent application be filed within one month after the corresponding restriction of the parent application has been approved by the applicant.

(3) If the applicant wants a utility model registration of an independent creation in an international application, the application shall be divided and a new application fee be paid even if the additional fee referred to in section 34(1) of the Utility Models Act has been paid.

16.- If by addition to the description or the utility model claims or in any other way a utility model application discloses a creation which is not disclosed in the basic documents, a new application relating to that creation may by excision from the original application (the parent application) at the request of the applicant be considered to have been filed on the date on which the document disclosing the creation was received by the Patent and Trademark Office.

17.-(1) In the event of division or excision the description and accompanying drawings or photographs and utility model 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.

Applications after conversion of European patent applications

18.-(1) If a European patent application is transmitted to the Patent and Trademark Office pursuant to Articles 136 and 140 of the European Patent Convention, the Office shall as soon as possible notify the applicant thereof.

(2) The application fee and a translation or, if the European application is drawn up in Danish, a copy of the application pursuant to section 36 of the Utility Models Act shall be received by the Patent and Trademark Office within two months from the date on which the Patent and Trademark Office has sent the notification referred to in subsection 1 to the applicant.

Part 3

*Presentation of utility model claims,
description and abstract*

19.-(1) The utility model claims shall define the matter for which protection is sought in terms of the technical features necessary to achieve the desired effect. Utility model claims shall contain:

- (i) a title of the creation,
 - (ii) a statement of the art in relation to which the creation constitutes something new (the state of the art) and
 - (iii) a statement of the novel and characteristic features of the creation.
- (2) The statement of the matter referred to in subsection 1(ii) to (iii) may, if so desired, be made in the form of a reference to the description, including drawings or photographs, if any.
- (3) Each utility model claim shall relate to one creation only.
- (4) A utility model claim shall not contain anything that is irrelevant to the creation specified in the claim or immaterial to the exclusive right applied for.

20.- A utility model application may contain several utility model claims. If several claims are included in the application, they shall be presented together and numbered consecutively.

21.-(1) A utility model application may comprise several creations if there is a technical relationship among the creations. The technical relationship shall manifest itself in the creations involving, wholly or in part, the same or corresponding special technical features. The expression “special technical features” shall mean the technical features contributed by the creation over and beyond the state of the art.

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

22.-(1) The description shall start by giving a brief and factual title of the creation and shall state how it may be exploited commercially if that does not appear directly from the nature of the creation. The description shall, moreover, include:

- (i) a statement of the technical field within which the creation is to be used and of the state of the art on which the creation is based;
- (ii) a specified disclosure of the creation which is to be protected in such a way that the technical problem and its solution can be understood and an indication of the effects of the creation with reference to the state of the art and the means required to achieve those effects;
- (iii) a specified disclosure of the creation illustrated by explanatory examples or embodiments referring to drawings or photographs, if any.

(2) The description of the creation shall only contain subject-matter which contributes to the understanding of the creation. If newly coined terms or terms which are not generally accepted are used, their meanings shall be explained. Terms and units of measurement shall not deviate from those in general use within the relevant technical field.

23.- The abstract shall state the title of the creation and shall contain a brief summary of the creation which appears from the basic documents, cf. section 29. The abstract shall not contain more than 150 words.

Part 4

Deposits of biological material

24.-(1) Deposits under section 15(1) of the Utility Models 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.

25.-(1) If a Danish utility model application comprises the deposit of a sample of biological material, the application shall at the filing contain information to that effect, cf. section 2(1)(ix). The institution with which the deposit has been made and the number which the institution has accorded to the deposited sample shall appear from the application.

(2) With respect to an international application the applicant shall within 16 months from the date of filing of the application or, if priority is claimed, from the date of priority, notify the International Bureau referred to in section 9 about the institution with which the deposit has been made and the number which the institution has accorded to the deposited sample.

If a deposited sample of biological material has been transferred from one depositary institution to another under Rule 5.1 of the Regulations under the Budapest Treaty, the applicant shall not later than two months after having received the receipt with respect to the transferred deposit notify the Patent Authority thereof and of the new number accorded to the deposited sample.

26. A new deposit under section 15 of the Utility Models Act shall be made in accordance with the provisions of the Budapest Treaty for a new deposit.

27. As proof of the correctness of a deposit the Patent Authority may require that the applicant files a copy of the receipt issued by the depositary institution with respect to the deposit.

Part 5

Amendment of utility model applications

28.-(1) A utility model claim shall not be amended so as to contain subject-matter not disclosed in the basic documents, cf. sections 17(1) and 29. If a utility model 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) Unless the Patent Authority allows otherwise, amendments of or additions to utility model claims shall be effected by the filing of new copies of the claims. Those copies shall comprise all the maintained claims in consecutive order.

29.-(1) The basic documents of a Danish utility model application, a utility model application taken up for examination and other processing pursuant to section 35 of the Utility Models Act or a European patent application for which conversion into a Danish utility model application is requested shall be held to be the description and accompanying drawings or photographs and utility model claims drawn up in Danish,

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 referred to in subsection 1, the basic documents shall be held to be the first description and accompanying drawings or photographs and utility model claims filed in Danish, Norwegian or Swedish to the extent their contents appear clearly from the documents present on the date of filing of the application or on the date on which the application is deemed to have been filed, respectively.

(3) The basic documents of an international application proceeded with under section 29 of the Utility Models Act shall be held to be the translation of the description, drawings or photographs and utility model 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 under section 46. If the international application has been filed with the receiving Office in Danish, the basic documents shall be held to be the description, drawings or photographs and utility model claims filed under section 29 of the Utility Models Act.

(4) If an application has resulted in registration with the consent of the applicant, or if the application has been refused prior to the expiry of the time limit applying under section 46, cf. sections 31, 32 and 34 of the Utility Models Act, the basic documents shall be held to be the description, drawings or photographs and utility model claims which were present at the time when the decision on the application was made.

Part 6

Search and examination as to difference by the Patent Authority

30.-(1) In examining whether the conditions laid down in section 5 of the Utility Models Act are complied with, the Patent Authority shall consider everything that comes to its attention.

(2) The search shall, to the extent required, be made on the basis of utility model specifications and utility model applications available to the public from Denmark, designs registered in Denmark, patent specifications, patent applications laid open to public inspection, published patent applications or abstracts thereof from Denmark, Sweden, Finland and Norway. In addition thereto the Patent Authority shall determine the further extent of the search as regards the countries whose patent data bases are to be searched after the limitation used “pursuant to the Patent Cooperation Treaty”. If deemed necessary, the search shall also be made on the basis of other available literature.

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

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

33.-(1) If the applicant has also applied for a patent or a utility model registration for the same invention or creation abroad, the Patent Authority may, with the limitation specified in section 69(3), 2nd sentence, of the Patents Act or section 64(3), 2nd

sentence, of the Utility Models Act, require the applicant to furnish information about any communication from the patent institution in question concerning the novelty of the invention/creation or its patentability/registrability 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 protection of the invention/creation and file a copy or a transcript of the communications with the said patent institutions as regards the novelty or the patentability/registrability in other respects. If the applicant has not received any such communication, the applicant shall submit a declaration to that effect.

34.- If, during the examination and other processing of a utility model application, information of importance to the examination of the application is submitted, the applicant shall be notified thereof. The person who has submitted such information shall, where relevant, be notified of the opportunity to request an examination when the registration of the creation has been effected.

Part 7

Applications available to the public

35.-(1) When, prior to the registration of the creation, the files of a utility model application is made available to the public pursuant to section 24(3) of the Utility Models 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 creation, and the applicant's name or firm name and postal address as well as the creator'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 is made on the basis of a patent application under section 12 of the Utility Models Act, the advertisement shall contain information about the type of that patent application, cf. section 13(1), 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 24(7) of the Utility Models 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 the utility model claims of an international application has been amended prior to the expiry of the time limit applying under sections 31, 32 and 34, but after the files of the application have been made available to the public, that shall be advertised.

36.-(1) A request under section 24(6) of the Utility Models 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 I1 of the Regulations under the Budapest Treaty.

(2) If the request referred to in subsection 1 is submitted before the application to which the deposit relates has been finally decided upon, 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 upon, and within the same period or, if the creation is registered as a utility model, until the utility model registration 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 submitted with respect to a deposit relating to a utility model registration, the person requesting the furnishing of the sample shall undertake vis-à-vis the proprietor of the utility model not to make the sample available to any third party until the utility model registration has ceased to have effect.

(4) As regards biological material derived from the sample which still exhibits the characteristics of the deposited sample which are essential to carrying out the creation, 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.

37.-(1) A request under section 24(7) of the Utility Models Act to the effect that the furnishing of a sample shall only be effected to an expert in the art shall be filed with the Patent and Trademark Office not later than on the date on which the application is made available to the public under section 24 of the Utility Models Act.

(2) If the furnishing of a sample may only be effected to an expert in the art, cf. subsection 1, the expert shall be indicated in the request for a sample. The request shall be accompanied by a declaration from the expert in which he accepts the obligations vis-à-vis the applicant to the extent referred to in section 36(2) and (4). In those cases the requester shall not be required to make any declaration himself.

(3) Any person entered on a list drawn up by the Patent and Trademark Office or any person approved by the applicant in the individual case may be used as an expert.

38. Even if a declaration has been made under sections 36 and 37, biological material derived from a furnished sample may be deposited for the purpose of a new utility model application or a patent application, if the deposit of the derived biological material is required for that application.

39. If a request has been submitted for the furnishing of a sample, and if under the Utility Models 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 utility model.

Part 8

*The Patent and Trademark Office as
receiving Office for
international applications*

40.-(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.

41.-(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 fee prescribed for the application as laid down in Rule 14, 15 or 16 of the Regulations under the Patent Cooperation Treaty to the Patent and Trademark Office in its capacity of receiving Office. The fee consists of:

(i) the international application fee,

(ii) the search fee and

(iii) the fee for the handling of the application by the Patent and Trademark Office as receiving Office (the transmittal fee).

(3) The application fee shall be paid within one month from the receipt of the application.

(3) (4) If the application fee 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.

42.-(1) The applicant may choose whether the Swedish Patent Office or the European Patent Office shall be the Searching Authority with respect to the applications referred to in section 40(1). The application shall be filed in a single copy in Danish, Swedish, Norwegian, English, German or French. 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 one month from the date of receipt in accordance with Rule 12.3 of the Regulations under the Patent Cooperation Treaty or, if Sweden has been chosen as Searching Authority, within 14 months from the date of priority, cf. Rule 12.4.

43. A separate record shall be kept of international applications filed with the Patent and Trademark Office. The record shall not be open to the public.

44. 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 9.

Part 9

*Translation of international applications,
etc.*

45.-(1) The provisions of section 6(2) and (3) shall apply *mutatis mutandis* with respect to the filing of a translation under section 29 of the Utility Models Act and a request for a review under section 31 of the Utility Models Act.

(2) The Patent and Trademark Office may limit the obligation to file a translation in the cases where only parts of an international application are 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.

46.-(1) The time limit referred to in sections 31, 32 and 34 of the Utility Models Act shall expire four months after the expiry of the time limit prescribed in section 29 of the Utility Models Act.

(2) If the applicant within 19 months from the international filing date or, if priority is claimed, from the priority date in accordance with the Patent Cooperation Treaty has filed a declaration to the effect that the applicant intends to use the results of an international preliminary examination in applying for utility model protection for Denmark, the time limits referred to in sections 31, 32 and 34 of the Utility Models Act shall expire at the same time as the time limit of 33 months for proceeding with the application.

47.- If, with respect to an international application, the applicant has complied with the provisions of section 29 of the Utility Models Act, but the Patent and Trademark Office has not yet received notification from the International Bureau referred to in section 9 to the effect that the Bureau has received the application, the Patent and Trademark Office shall notify the Bureau thereof.

48.-(1) The time for presenting a request for a review under section 35(1) of the Utility Models Act shall expire two months after the date on which the receiving Office or the International Bureau referred to in section 9 has notified the applicant that an international filing date cannot be accorded. (2) If the applicant proves that he has received the notification referred to in subsection 1 more than seven days after the date of the notification, the time limit shall be extended by as many days in excess of seven as have passed from the date of the notification till the date on which the applicant received the notification.

49.-(1) If, in the cases referred to in section 29 of the Utility Models Act, the applicant has availed himself of mailing, and the mail is not received in due time, but the act is completed within one month after the date on which the applicant noticed or should have noticed that the time limit was exceeded and not later than six months after the expiry of the time limit, the Patent and Trademark Office shall pursuant to Article 48 of the Patent Cooperation Treaty consider the time limit as met provided that:

(i) within the ten days preceding the expiry of the time limit the postal service was interrupted on account of war, revolution, civil disorder, strike, natural calamity or other like reason in the locality where the sender has his residence or his place of

business or is staying, and it is proved that the mailing to the Patent and Trademark Office is effected within five days after the resumption of the postal service, or the mailing was effected by registered letter to the Patent and Trademark Office not later than five days prior to the expiry of the time limit though only if the mailing was effected by airmail, or, where that was not possible, if the sender had every reason to believe that surface mail would not arrive later than two days after the date of mailing. (2) If the applicant wishes to invoke the provisions of subsection 1, a request to that effect shall be filed with the Patent and Trademark Office before the expiry of the time limit referred to.

Part 10

Registration and advertisement of the creation

50.- Publication of the utility model claims, description, including drawings or photographs, and abstract (the utility model specification) shall be effected at the instance of the Patent and Trademark Office as soon as possible after the registration of the creation. The utility model specification shall indicate the date of the utility model registration and:

- (i) the number of the application and the registration number of the utility model,
- (ii) the classes of the utility model according to the international patent classification system,
- (iii) the name or firm name and postal address of the proprietor of the utility model,
- (iv) if the proprietor of the utility model is represented by an agent, the name or firm name of the agent,
- (v) the name and postal address of the creator,
- (vi) the title of the creation,
- (vii) if the application was filed as
 - (a) a Danish utility model 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 29 of the Utility Models Act or is deemed to have been filed under section 35(3) of the Utility Models Act, and the number of the international application or
 - (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 utility model application,

if the application was made on the basis of

- (a) a Danish patent application under section 12 of the Utility Models Act, the date of filing and number of the patent application,
- (b) an international application under section 12 of the Utility Models Act, the number of the 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 of the Patents Act, and the number of the Danish patent application,
- (c) a European patent application under section 12 of the Utility Models Act, the date of filing of the European patent application under the European Patent Convention and its number or

- (d) a converted European patent application under section 12 of the Utility Models Act, cf. section 36 of the Utility Models Act, the number of the European patent application, 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 and the number of the Danish patent application,
- (ix) if priority is claimed under section 11 of the Utility Models Act, where the application serving as a basis for the priority claim was filed and the date of filing and number of that application,
- (x) if the application is resulting from division or excision, the number of the parent application,
- (xi) whether the utility model comprises the deposit of a sample of biological material,
- (xii) whether the application has been examined under section 19(2) of the Utility Models Act and, where applicable, any cited documents and the date on which the files of the application were made available to the public, if the date is different from the date on which the utility model was registered.

51.-(1) Advertisements shall be made in Dansk Brugsmødelidende (the Danish Utility Model Gazette) issued by the Patent and Trademark Office.

(2) The advertisement of the registration of the creation made under section 21(1) of the Utility Models Act shall contain the items of information to be given in the utility model specification under section 50 with the exception of any cited documents.

Part 11

The Register of Utility Models, etc.

52.-The Patent and Trademark Office shall keep a register of the utility models registered in this country.

53.- When the Patent Authority has made a final decision to register a utility model, the following items shall be entered in the Register of Utility Models:

- (i) the number of the application and the registration number of the utility model,
- (ii) the classes of the utility model,
- (iii) the name or firm name and postal address of the proprietor of the utility model,
- (iv) if the proprietor of the utility model is represented by an agent, the name or firm name and postal address of the agent,
- (v) the name and postal address of the creator,
- (vi) the title of the creation,
- (vii) if the utility model is registered on the basis of
 - (a) a Danish utility model 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 29 of the Utility Models Act or the date on which the application is deemed to have been filed under section 35(3) of the Utility Models Act, and the number of the international application or
 - (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 utility model application,
- (viii) if the utility model is registered on the basis of an application made on the basis of
- (a) a Danish patent application under section 12 of the Utility Models Act, the date of filing and number of the patent application,
 - (b) an international application under section 12 of the Utility Models Act, the number of the 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 of the Patents Act, and the number of the Danish patent application,
 - (c) a European patent application under section 12 of the Utility Models Act, the date of filing of the European patent application under the European Patent Convention and its number or
 - (d) a converted European patent application under section 6 of the Utility Models Act, cf. section 36 of the Utility Models Act, the number of the European patent application, 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 and the number of the Danish patent application,
- (ix) if priority is claimed under section 11 of the Utility Models Act, where the application serving as a basis for the priority claim was filed and its date of filing and number,
- (x) if the utility model is registered on the basis of an application resulting from di-vision or excision, the number of the parent application,
- (xi) if the utility model comprises the deposit of a sample of biological material, information stating the institution with which the sample is deposited and the number accorded to the deposited sample by the institution,
- (xii) whether the utility model is registered on the basis of an application which has been examined under section 19(2) of the Utility Models Act,
- (xiii) the date on which the files of the application were made available to the public if the date is different from the date on which the utility model was registered and
- (xiv) the date on which the registration of the utility model was advertised under section 21 of the Utility Models Act.

54.-(1) If the Patent and Trademark Office is notified that proceedings have been instituted for the revocation of a utility model registration, for the transfer of a utility model registration or for a compulsory licence, cf. section 59 of the Utility Models 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 61(4) of the Utility Models Act, an entry to that effect shall be made in the Register of Utility Models. 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.

- (viii) If the Patent and Trademark Office under sections 48 and 49 of the Utility Models Act has transferred the registration to the entitled

person or has declared the utility model registration to have ceased to have effect, an entry to that effect shall be made in the Register.

55.-(1) An entry under section 40 of the Utility Models Act concerning the transfer of the right to a registered utility model or the grant of a licence shall comprise the name or firm name and postal address of the holder of the right in question as well as the date on which the transfer or the grant of the licence was effected. As far as licences are concerned, an entry shall be made, if so requested, as to whether the right of the proprietor of the utility model to grant additional licences is restricted. If the question concerning the entry of the transfer of a registered utility model or the grant of a licence cannot be decided upon immediately, it shall be stated in the Register that a request for an entry has been submitted.

(2) Notifications with respect to changes regarding the agent or the name, firm name or postal address of the proprietor of the utility model shall be entered in the Register.

(3) A request for an entry as referred to in subsections 1 and 2 shall be submitted to the Patent and Trademark Office and be accompanied by proper documentation for the change. The Patent and Trademark Office may grant exemption from the requirement concerning a power of attorney.

(4) If the Patent and Trademark Office with respect to a registered utility model has received information about the transfer of deposited biological material as referred to in section 25(3) or has received a copy of the receipt for a new deposit, cf. section 26, an entry concerning the transfer or the new deposit shall be made in the Register.

(2) **56.**-(1) Renewal of the registration of a utility model shall be effected by payment of the prescribed fee to the Patent and Trademark Office not earlier than three months before and not later than six months after the expiry of the registration period. If the registration of a utility model has been renewed, an entry to that effect shall be made in the Register of Utility Models.

(3) The advertisement of the renewal shall contain information about the registration number and the date of expiry of the registration period.

57.- If the registration has terminated, the utility model shall be deleted from the Register.

Part 12

Administrative examination of a utility model registration

58.-(1) A request for examination under section 50 of the Utility Models Act shall be filed with the Patent and Trademark Office and shall contain:

- (i) the name or firm name and postal address of the person making the request,
 - (ii) the registration number of the utility model to which the request relates as well as the name or firm name of the proprietor of the utility model and the title of the creation,
 - (iii) if the person making the request is represented by an agent, the name or firm name and postal address of the agent and
 - (iv) an indication as to which of the grounds for revocation referred to in section 47 of the Utility Models Act the request is based on.
- (2) A request under section 50 of the Utility Models Act shall be accompanied by the prescribed fee.

59.-(1) If the request for examination does not comply with the requirements of section 50 of the Utility Models Act and section 58(2) of this Order, or if it cannot be established who made the request, the request shall be rejected.

(2) If the request for examination does not comply with the provisions of section 58(1), the person having made the request shall be invited to remedy the deficiencies within one month. If the request is not corrected in due time, it shall be rejected.

60.-(1) When a request for examination has been filed under section 50 of the Utility Models Act, the request shall be advertised. The advertisement shall state the name or firm name of the proprietor of the utility model, the date of filing and number of the application, the registration number and classes of the utility model, the title of the creation, the name or firm name of the person who made the request and the registration date of the utility model.

(2) An entry of the filing of a request under section 50 of the Utility Models Act shall be made in the Register of Utility Models.

61.-(1) If the request for examination has been filed by persons other than the proprietor of the utility model, a copy of the request and the accompanying documents shall be sent to the proprietor of the utility model. After that the Patent and Trademark Office shall perform an examination pursuant to section 50 of the Utility Models Act. When the result of the examination is available, the result shall be communicated to the proprietor of the utility model, and he shall be invited, if necessary, to file a description, utility model claims and drawings or photographs in amended form within two months.

(2) If the proprietor of the utility model replies to the invitation, the Patent Authority shall decide whether additional correspondence between the Patent Authority and the proprietor of the utility model is necessary.

62.- If, after the filing of a request under section 50 of the Utility Models Act, the Patent Authority finds that there are grounds for refusal of the registration, and that consequently the registration is to be cancelled, the parties shall be notified thereof by way of a decision stating the grounds. The same shall apply when a request for examination has been made by persons other than the proprietor of the utility model, and the Patent Authority finds that the utility model registration may be maintained in unamended form.

63.-(1) If the request for examination has been filed by persons other than the proprietor of the utility model, the Patent Authority shall, before it decides to maintain the utility model registration in amended form, notify the parties thereof and invite the proprietor of the utility model to file his observations within two months if he disapproves of the text in which the Patent Authority intends to maintain the utility model registration.

(2) If it appears, after the expiry of the time limit, that the proprietor of the utility model disapproves of the text in which the Patent Authority intends to maintain the utility model registration, the processing of the request may be continued. Otherwise, the proprietor of the utility model shall be invited to pay the fee for advertisement of a notice of the amendment within one month.

(3) The decision to maintain the utility model registration in amended form shall state the text in which the utility model is maintained.

64.-(1) The publication of a new utility model specification including a description, drawings or photographs and utility model claims in the amended form shall be effected at the instance of the Patent and Trademark Office and shall be initiated as soon as possible after the fee for advertisement of a notice of the amendment has been paid.

(2) The advertisement of the decision on a request under section 50, cf. section 52, of the Utility Models Act, shall also indicate the name or firm name of the proprietor of the utility model, the date of filing and number of the application, the registration number and classes of the utility model, the title of the creation and the registration date of the utility model.

(3) An entry of the decision on a request for examination under section 50 of the Utility Models Act shall be made in the Register of Utility Models.

Part 13

Miscellaneous provisions

65.- Notwithstanding a utility model registration, 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 utility model legislation which recognises creations made by nationals of another State which is a party to the first-mentioned Convention and protects such creations by a legislation which is in principle in conformity with the Paris Convention.

66.-(1) In the evaluation of the possibility of obtaining a compulsory licence under section 41(1) of the Utility Models 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 44 of the Utility Models 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.

67.- 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 14

Entry into force

68.-(1) This Order shall enter into force on 1 January 2007.

(2) At the same time Order No. 484 of 10 June 2003 on the examination and other processing of utility model applications and registered utility models shall be repealed.

The Patent and Trademark Office, 8 December 2006

JESPER KONGSTAD

/ Peter Langkjær