

## ***Treaty between the Swiss Confederation and the Principality of Liechtenstein on Patent Protection***

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French title: *Traité entre la Confédération suisse et la Principauté de Liechtenstein sur la protection conférée par les brevets d'invention (Traité sur les brevets)*.<sup>1</sup>

English title: *Treaty between the Swiss Confederation and the Principality of Liechtenstein on Patent Protection (Patent Treaty)*

Vaduz, December 22, 1978

Entry into force: April 1, 1980.

### **Chapter 1: General Provisions** ➔

#### Article 1: Unified Territory of Protection

Switzerland and the Principality of Liechtenstein shall form a unified territory of protection for the purposes of patent law.

#### Article 2: European Patents

A European patent may only be obtained for Switzerland and the Principality of Liechtenstein by joint designation under Article 149 of the European Patent Convention. Designation of one of the Contracting States shall be deemed to constitute designation of both of them.

#### Article 3: International Patent Applications

(1) In an international application, Switzerland and the Principality of Liechtenstein may only be designated jointly under Article 4 of the Patent Cooperation Treaty. Designation of one of the Contracting States shall be deemed to constitute designation of both of them.

(2) The same shall apply *mutatis mutandis* for the election of Switzerland and the Principality of Liechtenstein under Article 31 of the Patent Cooperation Treaty, provided that Chapter II of that Treaty is applicable to both Contracting States.

#### Article 4: Legal Effect of Patents

(1) The patents valid for the unified territory of protection shall be unified patents. They shall have the same effect in both Contracting States and may only be granted, transferred, annulled or lapse in respect of the whole territory of protection.

(2) The unified nature of the patents shall also apply in cases where patents have been expropriated on the basis of the patent legislation; the expropriated person shall nevertheless be entitled to a free and exclusive license for the territory of the Principality of Liechtenstein.

#### Article 5: Applicable Law

(1) In the unified territory of protection,

(a) the current Federal legislation on patents (patent legislation), and

(b) other provisions of Federal legislation as required by the application of the patent legislation,

shall apply.

(2) National territory for the purposes of the patent legislation shall mean the unified territory of protection, subject to Article 8 of this Treaty.

(3) The law applicable in accordance with paragraph (1) shall be set out in the Annex to this Treaty. Additions and amendments to the Annex shall be communicated by the Swiss Federal Council to the Government of the Principality of Liechtenstein and the latter shall have them published. Where the Government of the Principality of Liechtenstein is opposed to the inclusion of a Swiss statute in the Annex, Article 16 shall be applicable.

#### Article 6: Treaties and Conventions

(1) For the duration of this Treaty, the Principality of Liechtenstein, just as Switzerland, shall be a party to the Paris Convention for the Protection of Industrial Property, the European Patent Convention, the Patent Cooperation Treaty and, where required in application of this Treaty, other conventions.

(2) Switzerland shall conclude bilateral treaties concerning patents with third-party States, which affect the application of this Treaty, only with effect for the unified territory of protection. It shall endeavor to obtain that the effect of treaties concluded before the entry into force of this Treaty shall be extended to the Principality of Liechtenstein.

(3) The Principality of Liechtenstein shall authorize Switzerland to represent it for the duration of this Treaty in negotiations with third-party States concerning the conclusion or amendment of bilateral treaties concerning patents and to conclude such treaties with effect for the Principality.

(4) The Principality of Liechtenstein shall refrain for the duration of this Treaty from independently concluding bilateral treaties concerning patents with third-party States.

## **Chapter 2: Administrative Tasks** ➔

#### Article 7: Competent Office

(1) The Federal Bureau of Intellectual Property\* shall be competent to carry out with effect for the unified territory of protection the administrative tasks deriving from the patent legislation.

(2) The Bureau shall be a receiving Office within the meaning of Article 2 and Rule 19 of the Patent Cooperation Treaty for international applications filed by persons who are Liechtenstein nationals or have their headquarters or domicile in the Principality of Liechtenstein.

#### Article 8: Representation

Natural persons or legal entities having their domicile or headquarters in the Principality of Liechtenstein may be appointed representatives in proceedings before the Federal Bureau of Intellectual Property, to the extent that they are entitled to act as professional representatives in patent proceedings under Liechtenstein law.

#### Article 9: Reference to the Territorial Scope of Protection

The Federal Bureau of Intellectual Property shall suitably draw attention, on publications issued after the entry into force of this Treaty, to the fact that patents have effect for the unified territory of protection.

### **Chapter 3: Legal Protection** ➔

#### Article 10: Liechtenstein Authorities

(1) The Principality of Liechtenstein shall designate the judicial authorities that, in patent proceedings

(a) decide as sole instance in civil actions,

(b) order provisional measures.

(2) Offenses against the patent legislation shall be prosecuted and judged in first and second instance by the courts of the Principality of Liechtenstein.

(3) The Liechtenstein authorities competent for prosecution, for judging civil and criminal matters and for executing civil and criminal judgments in patent proceedings shall have the same rights and obligations as the corresponding Swiss authorities.

#### Article 11: Legal Remedies

Civil and criminal judgments issued in patent proceedings by courts of the Principality of Liechtenstein may, in conformity with the procedural provisions applicable under this Treaty, be the subject of an appeal to the Federal Court.

#### Article 12: Legal Assistance

The Swiss and Liechtenstein authorities competent for prosecution, for judging civil and

criminal matters and for executing civil and criminal judgments in patents proceedings shall be entitled and obligated to the same mutual legal assistance as between the Confederation and the cantons and as the cantons among themselves; the legislation of the Contracting States as regards extradition shall be reserved.

#### Article 13: Execution and Grace

(1) The competence and procedure for executing court decisions that are executable throughout the whole of the territory of protection shall be subject to the law of the State in which execution is applied for.

(2) The right of grace shall belong to the State in which judgment was given.

#### Article 14: Relations Between Authorities

The judicial and administrative authorities of the Contracting States may deal directly with one another.

### **Chapter 4: Legal Matters and Disputes** ➔

#### Article 15: Joint Committee

(1) To facilitate the implementation of this Treaty, a Joint Committee shall be set up, composed of representatives of the Contracting States.

(2) The tasks of the Joint Committee shall be, in particular:

(a) exchange of information and consideration of patent matters;

(b) consideration of matters connected with the interpretation or application of this Treaty.

(3) The Joint Committee shall meet at the request of either of the Contracting States.

#### Article 16: Settlement of Disputes

(1) All disputes arising from the interpretation or application of this Treaty shall be submitted, at the request of either of the Contracting States, to the Joint Committee whose task it shall be to seek a solution to the dispute.

(2) Where it is not possible to settle a dispute, either of the Contracting States shall be entitled to submit it to a committee composed of one representative of each of the Contracting States. These representatives may not have participated in the discussions of the Joint Committee.

(3) Where one State has not designated its representative and has not responded to the invitation of the other State to make such designation within two months, that representative shall be appointed, at the request of the latter State, by the President of the European Court of Human Rights.

(4) Should the two representatives not achieve a settlement within three months of the dispute having been submitted to them, they shall designate by common accord a member

from among the nationals of a third-party State. Failing agreement on the choice of such member within a period of two months, either Contracting State may request the President of the European Court of Human Rights to appoint the third member of the committee; the latter shall then assume the functions of an arbitration tribunal.

(5) Where the President of the European Court of Human Rights is impeded in the cases referred to in paragraphs (3) and (4) or is a national of one of the Contracting States, the appointment of the representative or of the third member shall lie with the Vice-President of the Court or with the most senior member of the Court who is neither impeded nor a national of one of the Contracting States.

(6) Unless otherwise provided for by the Contracting States, the arbitration tribunal shall itself decide on its procedure. The arbitration tribunal shall take its decisions on a majority of the votes of its members; its decisions shall be final and binding.

(7) Each State shall bear the cost arising from the activity of the member of the court it has appointed. The costs of the third member of the committee shall be borne in equal parts by the Contracting States.

## **Chapter 5: Transitional and Final Provisions ➔**

### Article 17: Patents Already Granted

This Treaty shall also apply to patents granted with effect for Switzerland prior to its entry into force.

### Article 18: Implementation of the Treaty

(1) The Governments of the Contracting States shall conclude an implementing agreement.

(2) Where necessary, the Contracting States shall issue implementing rules.

### Article 19: Ratification and Entry into Force

(1) This Treaty shall require ratification. The instruments of ratification shall be exchanged in Berne as soon as possible.

(2) This Treaty shall enter into force on the first day of the third month following exchange of the instruments of ratification.

### Article 20: Duration and Denunciation

(1) This Treaty shall be concluded for an unlimited period of time.

(2) It may be denounced at any time by either of the Contracting States. It shall nevertheless remain in force for one year after denunciation.

### Article 21: Maintenance of Acquired Rights

(1) The expiry of this contract shall not effect rights acquired hereunder.

(2) The Governments of the Contracting States shall take by common accord the necessary measures to ensure that persons entitled may continue to claim their rights in court for the remainder of the period of protection.

### **Implementing Agreement to the Treaty between Switzerland and Liechtenstein in Respect of Patents ➔**

**Berne, December 10, 1979**

#### Article 1: Notice of Territorial Scope of Protection

(1) Pursuant to Article 9 of the Treaty, the territorial scope of protection shall be notified in the Swiss Patents, Designs and Trademarks Journal, in the yearly catalog and on published patent specifications and applications.

(2) The Federal Office of Intellectual Property and the Liechtenstein Office of Intellectual Property shall determine by common accord those forms used in the patent granting procedure which shall also bear such notice.

#### Article 2: Liechtenstein Representatives

(1) The Office of the National Economy of the Principality of Liechtenstein shall keep a list of the natural persons and legal entities authorized under Article 8 of the Treaty to act as professional representatives in respect of patents.

(2) That Office shall communicate to the Federal Office of Intellectual Property the entries made in the list and the subsequent amendments to such entries together with, in the case of legal entities, the names of the natural persons holding the authorization provided in paragraph (1).

#### Article 3: Provision of Printed Matter

(1) The Federal Office of Intellectual Property shall provide free of charge to the Liechtenstein Office of Intellectual Property the following publications:

- (a) a complete edition of the Swiss Patent, Designs and Trademarks Journal (Parts I to V);
- (b) an additional copy of the general part (Part I) of the Swiss Patent, Designs and Trademarks Journal;
- (c) the yearly catalog.

(2) On request, the judicial and administrative authorities of Liechtenstein shall receive free of charge from the Federal Office of Intellectual Property individual copies of patent specifications and applications.

(3) If a public collection of patent specifications, arranged according to the International Patent Classification, is established in the Principality of Liechtenstein, the Federal Office of Intellectual Property shall provide free of charge, at the request of the Liechtenstein authorities, the necessary patent documents it has published.

(4) The Liechtenstein Office of Intellectual Property shall receive free of charge the forms and information sheets required by applicants.

#### Article 4: Administrative Execution

The Federal Office of Intellectual Property and the Liechtenstein Office of Intellectual Property shall be empowered to settle by common accord questions arising from the administrative execution of the Treaty and of this Implementing Agreement.

#### Article 5: Final Provision

(1) This Agreement shall enter into force at the same time as the Patent Treaty of December 22, 1978, and shall remain applicable for as long as that Treaty remains in force.

(2) It may be amended at any time by common accord.

### **Annexe** ➔

#### **état au 31 octobre 1978**

*Liste des prescriptions légales suisses ainsi que des conventions et accords applicables dans la Principauté de Liechtenstein en vertu de l'article 5 du traité*

#### **1. Prescriptions légales relatives à la protection des inventions**

Loi fédérale du 25 juin 1954 sur les brevets d'invention, modifiée par la loi fédérale du 17 décembre 1976

Ordonnance du 19 octobre 1977 relative aux brevets d'invention (Ordonnance sur les brevets)

Ordonnance du 19 octobre 1977 sur les taxes du Bureau fédéral de la propriété intellectuelle (Ordonnance sur les taxes)

Arrêté du Conseil fédéral du 28 janvier 1908 concernant l'application de l'article 18 (actuellement art. 39) LBI (réciprocité envers les Etats-Unis d'Amérique pour l'extinction des brevets)

#### **2. Autres prescriptions légales, en tant que l'application de la législation sur les brevets le requiert**

Loi fédérale du 20 décembre 1968 sur la Procédure administrative

Ordonnance du 10 septembre 1969 sur les frais et indemnités en procédure administrative

Loi fédérale du 21 juin 1963 sur la supputation des délais comprenant un samedi

Loi fédérale d'organisation judiciaire du 16 décembre 1943

Loi fédérale de Procédure civile fédérale du 4 décembre 1947

Loi fédérale du 15 juin 1934 sur la procédure pénale

Code civil suisse du 10 décembre 1907

Droit suisse des obligations du 30 mars 1911

Code pénal suisse du 21 décembre 1937

### **3. Conventions et accords internationaux**

Convention du 14 juillet 1967 instituant l'Organisation Mondiale de la Propriété Intellectuelle<sup>1</sup>

Convention de Paris du 20 mars 1883 pour la protection de la propriété industrielle, révisée à Bruxelles le 14 décembre 1900, à Washington le 2 juin 1911, à La Haye le 6 novembre 1925, à Londres le 2 juin 1934, à Lisbonne le 31 octobre 1958 et à Stockholm le 14 juillet 1967

Arrangement de Strasbourg du 24 mars 1971 concernant la classification internationale des brevets

Convention européenne du 27 novembre 1963 sur l'unification de certains éléments du droit des brevets d'invention<sup>2</sup>

Traité de coopération en matière de brevets, du 19 juin 1970 (PCT)<sup>2</sup>

Convention du 5 octobre 1973 sur la délivrance de brevets européens (Convention sur le brevet européen)<sup>2</sup>

Convention du 28 juillet 1951 relative au statut des réfugiés, article 141

Convention du 28 septembre 1954 relative au statut des apatrides, article 14

Déclaration du 8/28 novembre 1899 entre la Suisse et l'Empire allemand au sujet de la correspondance directe entre les autorités judiciaires et les autorités administratives des deux pays en ce qui concerne la propriété industrielle

Convention du 13 avril 1892 entre la Suisse et l'Allemagne concernant la protection réciproque des brevets, dessins, modèles et marques

Echange de lettres du 12 décembre 1977 entre la Suisse et la République de Corée sur la garantie et la protection réciproques des droits des brevets d'invention et des marques

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1: Source: Communication from the Swiss authorities. ➡

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