

## **Austrian Patent Law 1970**

Federal Law Gazette 1970/259 as amended by Federal Law Gazette 1973/581, 1977/349, 1981/526, 1982/201, 1984/126, 1984/234, 1985/104, 1986/382, 1987/653, 1992/418, 1992/771, 1994/212, 1994/634, 1996/181, I 1998/175, I 1999/191, I 2001/143, I 2004/149, I 2005/42, I 2005/130, I 2005/151, I 2006/96, I 2007/81, I 2009/126 and I 2009/135

### **I. GENERAL PROVISIONS**

#### **Patentable Inventions**

1. (1) On request, patents shall be granted for inventions in all fields of technology, provided that they are new (section 3), not obvious to the person skilled in the art from the state of the art, and susceptible of industrial application.

(2) Inventions that fulfill the conditions of subsection 1 shall be patented, even if they concern a product consisting of or containing biological material or a method by means of which biological material is produced, processed or used, wherein biological material means any material containing genetic information and capable of reproducing itself or being reproduced in a biological system. These patentable inventions shall also include

1. biological material which is isolated from its natural environment or produced by means of a technical method even if it previously occurred in nature;
2. an element isolated from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, even if the structure of that element is identical to that of a natural element.

(3) The following in particular shall not be regarded as inventions:

1. discoveries as well as scientific theories and mathematical methods;
2. the human body at the various stages of its formation and development;
3. the simple discovery of one of the elements of the human body, including the sequence or partial sequence of a gene;
4. aesthetic creations;
5. schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;
6. presentations of information.

(4) Subsection 3 shall exclude the patentability of the subject matter or activities referred to therein only to the extent to which protection is sought to such subject matter or activities as such.

#### **Exceptions to Patentability**

2. (1) Patents shall not be granted in respect of:

1. Inventions the exploitation of which would be contrary to "ordre public" or morality; such exploitation shall not be deemed to be so contrary merely because the exploitation of the invention is prohibited by law or regulation; within this meaning the following, in particular, shall be considered unpatentable:
  - a) processes for cloning human beings;
  - b) processes for modifying the germ line genetic identity of human beings;
  - c) uses of human embryos;
  - d) the production and exploitation of chimeras generated from germ cells, totipotent cells or cell nuclei of human beings and animals;
  - e) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes;

2. methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body; this provision shall not apply to products, in particular substances or compositions, for use in any of these methods.

(2) Patents shall not be granted for plant or animal varieties as well as for essentially biological processes for the production of plants or animals. The concept of plant variety is defined by Article 5 of the Regulation (EC) No. 2100/94 on Community plant varieties, Official Journal No. L 227 of September 1, 1994, p. 1, in the version of Regulation (EC) No. 2506/95, Official Journal No. L 258 of October 28, 1995, p. 3. A process for the production of plants or animals is essentially biological, if it consists entirely of natural phenomena such as crossing or selection. Inventions, which concern plants or animals, shall be patentable, if the technical feasibility of the invention is not confined to a particular plant or animal variety. Sentence 1, part 2, according to which patents shall not be granted for essentially biological processes for the production of plants or animals, shall be without prejudice to the patentability of inventions which concern a microbiological or other technical process or a product obtained by means of such a process, wherein microbiological process means any process involving or performed upon or resulting in microbiological material.

(3) When applying subsection 1 no. 1 lit. a to c the respective provisions of the Austrian Law on reproductive medicine, Federal Law Gazette No. 257/1992, have to be considered in their version valid at the time this law entered into force.

### **Novelty**

**3.** (1) An invention shall be considered to be new if it does not form part of the state of the art. The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the priority date of the application.

(2) Additionally, the contents of earlier priority date

1. patent applications based on this Federal Law,
2. utility model applications based on the Utility Model Law, Federal Law Gazette No. 211/1994,
3. international applications within the meaning of section 1 no. 6 of the Law Introducing Patent Treaties, Federal Law Gazette No. 52/1979, if the conditions pursuant to section 16 (2) of the aforementioned law are fulfilled,
4. European patent applications within the meaning of section 1 no. 4 of the Law Introducing Patent Treaties, and
5. European patent applications within the meaning of section 1 no. 4 of the Law Introducing Patent Treaties, if the European patent application emerged from an international patent application, but only insofar as the conditions of Article 153 (5) of the European Patent Convention, Federal Law Gazette No. 350/1979 are fulfilled,

in the originally filed version, whose contents was officially published only on the priority date of the later application or thereafter, shall also be considered as comprised in the state of the art. Such earlier applications shall not be taken into account when assessing the question, whether the invention was not obvious from the state of the art to a person skilled in the art.

(3) The patentability of substances or compositions comprised in the state of the art shall not be excluded by subsection 1 and 2, provided that they are intended for the use in a method referred to in section 2 (1) 2, and their use for any such method is not comprised in the state of the art. Subsection 1 and 2 shall also not exclude the patentability of the aforementioned substances or compositions for any specific use in one of the aforementioned methods, provided that such use is not comprised in the state of the art.

(4) For the application of subsection 1 and 2 a disclosure of the invention shall not be taken into account, if it occurred no earlier than six months preceding the filing of the application and if it was due to, or in consequence of

1. an evident abuse in relation to the applicant or his predecessor in title or
2. the fact that the applicant or his legal predecessor has displayed the invention at an official or officially recognized exhibition within the terms of the Convention relating to international exhibitions, Federal Law Gazette No. 445/1980.

(5) Subsection 4 no. 2 shall apply only, if the applicant states when filing the application that the invention has been displayed at the exhibition and submits a supporting confirmation by the exhibition

management within four months after the filing. The confirmation must specify the date of the opening of the exhibition and the date of the first disclosure, unless it is the same date. The confirmation must be accompanied by an identification of the invention, duly authenticated by the exhibition management.

#### **Entitlement to a Patent**

**4.** (1) Only the inventor and his successor in title shall be entitled to the grant of the patent. Until there is proof to the contrary the first applicant shall be considered the inventor.

(2) If the improvement or any other further modification of an invention already protected by a patent or under application resulting in a patent is filed by the owner of the parent patent or by his successor in title, the owner or the successor in title shall be entitled to obtain for the improvement or any other further modification either an independent patent or an additional patent dependent on the parent patent.

**5.** (1) The first applicant however shall not be entitled to the grant of the patent, unless he is the inventor or his successor in title, or if the substantial contents of his application has been taken from the descriptions, drawings, models, implements or arrangements of a third person or from a process used by that person without the consent by that person.

(2) If the invention successively has been taken from one holder of the invention by another without his consent, the earlier holder of the invention shall have priority over the later in case of a dispute.

#### **Inventions by Employees**

**6.** (1) Employees shall also be entitled to the grant of a patent for inventions made during the term of their employment (section 4), unless stipulated otherwise by agreement (section 7 (1)) or by virtue of section 7 (2).

(2) Employees shall mean salary and wage earners of any kind.

**7.** (1) Agreements between employers and employees according to which future inventions of the employee are to belong to the employer or the right to use such inventions is to be granted to the employer, shall be valid only, if the invention is an employee's invention (subsection 3). In order to be valid, the agreement must be in writing, which requirement shall also be satisfied if the agreement is included in a collective agreement (section 2 (1) of the Labor Organization Law, Federal Law Gazette No. 22/1974).

(2) If the employment is governed by public law, the employer may, without the need to enter into an agreement with the employee, claim the employee's inventions as a whole or the right to use such inventions; the right to use shall also be effective in respect of third parties. In such cases the provisions of the following subsection and of sections 8 to 17 and 19 shall apply *mutatis mutandis*.

(3) An employee's invention shall mean the invention of an employee if its subject matter falls within the activities of the enterprise in which the employee is active and if

- a) either the activity that led to the invention forms part of the employee's obligations, or
- b) the incentive for the invention by the employee is based on his activity within the enterprise, or
- c) the making of the invention was significantly facilitated by using the experiences or resources of the enterprise.

**8.** (1) In any case, the employee shall be entitled to an adequate special compensation for assigning an invention he made to the employer as well as for granting the right to use such an invention.

(2) If, however, the employee has been employed expressly for inventive activities within the employer's enterprise and actually is occupied primarily with such activities, and if his activities led to the invention, he shall be entitled to a special compensation only to the extent as the higher pay due to him in view of his inventive activity by virtue of his employment contract does not already comprise an adequate compensation.

**9.** Based on the circumstances of the individual case, the assessment of the compensation (section 8) shall especially take into account

- a) the economic importance of the invention for the enterprise;
- b) any other exploitation of the invention in Austria or abroad;
- c) what portion of incentives, experiences, preliminary work or resources of the employer's enterprise or internal instructions has contributed to bringing about the invention.

**10.** (1) Upon request of one of the parties, the compensation may be subsequently changed by reasonable discretion, if a substantial change has occurred in respect of the circumstances relevant for the adequacy of the compensation. However, in no case payments shall be refunded which the employee received on the basis of an earlier assessment. Compensation already paid or due based on an earlier assessment shall not be supplemented unless the compensation consists of a single payment.

(2) The employee shall be entitled to an amended compensation also where the employer has assigned the invention to a third party, if the proceeds the employer gains with this assignment are strikingly disproportionate to the compensation allocated to the employee, or if the employer continues to participate in the exploitation of the invention, thereby gaining profits which are strikingly disproportionate to the compensation allocated to the employee.

(3) The request (subsection 1 and 2) shall be made only after the expiration of one year from the latest assessment of the compensation.

**11.** (1) If the amount of the compensation (sections 8 to 10) has been made dependent on the exploitation of the invention by the employer and the latter fails to use the invention to an extent commensurate with its economic importance to the enterprise, the compensation shall be assessed as if the employer used the invention to an extent commensurate with its economic importance to the enterprise.

(2) The compensation shall be assessed in the same manner, if the employer has assigned the invention to a third party or has disposed of it in any other way, unless the employee has agreed to such an assignment or disposal and the employee fails to prove that such assignment or disposal has been made just for pretense.

(3) The employer shall be released from the obligation under subsection 1 to pay the compensation, if he undertakes to grant the right to use the invention to a third party to be designated by the employee. The third party, to whom the right to use is granted, shall compensate the employer for his share in the invention to be assessed in consideration of the provisions of section 9 lit. c. A subsequent change of the compensation may be requested in accordance to section 10.

(4) No claim (subsection 1 and 2) shall be raised if the employer, under reasonable consideration of the circumstances of the case, cannot be expected to use the invention at all or to a greater extent he has done or could be expected to do had there been no assignment or other disposal. If, however, the employer benefits from the invention without using it, an adequate compensation shall be due to the employee.

**12.** (1) If an agreement exists, according to which future inventions of the employee shall belong to the employer (section 7), the employee shall promptly notify the employer of any invention he makes except those apparently not falling within the agreement. The employer shall, within four months from the day he received such notification, declare to the employee whether he will claim the invention as an employee's invention on the basis of the existing agreement.

(2) If the employee fails to make such a declaration, he shall be liable to the employer, irrespective of the employer's entitlement to the invention, for any damages including any loss of profits. If the employer fails to make the declaration or makes a negative declaration, the invention shall belong to the employee.

**13.** (1) The employer and the employee shall be obliged to maintain secrecy with regard to the inventions that are subject matter of the notification and declaration provided in section 12 (1).

(2) The employee's obligation to maintain secrecy shall lapse

- a) if the employer has failed to make the declaration provided in section 12 (1), or if he made a negative declaration within the prescribed time;
- b) if the employer has claimed the invention in time (section 12 (1)) and has abandoned secrecy.

(3) The lapse of the obligation to maintain secrecy pursuant to the preceding provision shall not affect the obligation to maintain secrecy otherwise incumbent on the employee.

(4) The employer's obligation to maintain secrecy shall expire if he has claimed the invention in time (section 12 (1)) and the employee has not opposed that claim.

(5) The obligation to maintain secrecy shall preclude neither the employer nor the employee from protecting their rights by filing a patent application for the invention or by taking any other necessary steps.

(6) The employer or the employee who violates the obligation to maintain secrecy shall be liable to pay damages, including also the loss of profits, to the other party.

**14.** If the employer has compensated the employee for an employee's invention and it turns out afterwards that not this one but another employee of the same employer made the invention or that another employee of the same employer contributed to the invention, the employer is under no obligation to pay the compensation to the entitled person, neither in total nor in proportion to the entitled person's share in the invention, if the compensation was paid in good faith and the invention belongs to the employer according to the legal relationship in respect of the entitled person.

**15.** (1) Even though the employer has made agreements with the employee with respect to an employee's invention, he may declare at any time to waive his rights to the invention, wholly or partially. In such case the employee may request that the employer's rights to the invention be assigned to him to the extent of the waiver.

(2) If the employer waives the whole of his rights to the invention, the obligation to pay compensation shall cease at the time the waiver is declared. In case of a partial waiver, the employer may request an appropriate reduction of the compensation, provided that a separate exploitation of the rights assigned to the employee is possible.

(3) The obligation to pay compensation in respect of the time preceding the waiver shall remain unaffected.

**16.** The employer's and employee's rights arising from sections 6 to 15 shall remain unaffected by the termination of the employment.

**17.** The employee's rights arising from sections 6 to 16 shall neither be revoked nor limited by agreement.

**18.** *(Cancelled; Federal Law Gazette 1985/104)*

**19.** Claims of employers and employees arising from sections 7 to 15 shall be statute-barred after three years.

#### **Right to be designated as Inventor**

**20.** (1) The inventor shall be entitled to be designated as the inventor.

(2) The right shall not be assigned or inherited. Renunciation of the right shall have no legal effect.

(3) The inventor shall be designated on request by entry of his name in the publication of the application, in the announcement of the publication, in the announcement of the grant of the patent, in the patent specification, in the letters patent and by entry in the Patent Register. If the announcement of the grant of the patent has already been made and the letters patent has already been issued, a special certificate designating the inventor shall be issued upon request and a separate announcement shall be published in the Patent Gazette. The inventor's designation shall also be included in the documents certifying priority to be issued by the Patent Office.

(4) The request shall be made either by the inventor or by the applicant or by the patentee. If several persons are entitled to make the request, the requestor shall prove the consent of the other persons entitled, unless the request is made jointly by all entitled persons. If a person other than the one already designated as inventor is to be designated as such in addition or instead of the person so designated, the consent of the person already designated as inventor shall be proved.

(5) If the applicant, the patentee or the person already designated as the inventor refuses to give his consent, the Patent Office shall decide on the claim to be designated as inventor upon request.

(6) The request (subsection 5) shall be dealt with in accordance to the procedural provisions governing contestation proceedings. The grant of a patent shall not be deferred due to pending procedures on such a request. By virtue of a legally binding decision in favor of the request, subsection 3 shall be followed on request of the entitled person.

#### **Representatives**

**21.** (1) Anyone acting as a representative before the Patent Office or before the Supreme Patent and Trademark Chamber shall have his residence or place of business in Austria; however, for attorneys at law, patent attorneys and notaries public the professional regulations shall apply. The representative shall prove his authorization by producing the original written power of attorney or a duly certified copy thereof. If a power

of attorney has been granted to several persons, each of them shall be authorized to solely act as a representative.

(2) If an attorney at law, a patent attorney or a notary public acts as a representative, he may refer to the authorization granted to him without actually producing documentary evidence.

(3) If a representative acts without any power of attorney or, in the case of subsection 2, without referring to the authorization granted to him, the procedural act taken by him shall be valid only on condition that he produces a duly executed power of attorney or refers to the power of attorney granted to him within a reasonable time limit set to him.

(4) Anyone having neither a residence nor a place of business in Austria shall claim rights from this Federal Law before the Patent Office or before the Supreme Patent and Trademark Chamber only if he is represented by a representative as defined in section 77. If the residence or place of business is located in the European Economic Area or in the Swiss Confederation, the appointment of an authorized recipient with a residence in Austria shall be sufficient to claim rights under this Federal Law. To utilize information and other services provided by the Patent Office including expert opinions and searches neither the appointment of a representative nor an authorized recipient is obligatory.

(5) In addition to section 83c Law on Jurisdiction the place where

1. the representative has his Austrian residence or his Austrian place of business, or
2. the person authorized to accept delivery of post has his Austrian residence, or
3. in the absence of a representative having an Austrian residence or an Austrian place of business or an authorized recipient with an Austrian residence, the place where the Patent Office is located, shall, in matters relating to the patent, be regarded as the residence or place of business of a patentee having neither his residence nor place of business in Austria.

(6) The power granted to an attorney at law, a patent attorney or a notary public to act as a representative before the Patent Office shall authorize him by law to claim all rights from this Federal Law before the Patent Office and before the Supreme Patent and Trademark Chamber, especially to file patent applications, restrict or withdraw applications, file oppositions, waive patents, file and withdraw requests to be dealt with by the Nullity Department as well as appeals, enter into settlements, receive service of documents of any kind and payment of official fees and of the costs of proceedings and representation to be reimbursed by the adverse party, as well as to appoint a substitute.

(7) The power pursuant to subsection 6 may be limited to a particular property right and to representation in particular proceedings. It shall, however, expire neither on the death of the mandatory nor by any change in his capacity to act.

(8) If a representative who is neither an attorney at law, nor a patent attorney nor a notary public is to be authorized to waive, in whole or in part, a granted patent, he must be expressly authorized to do so.

#### **Effect of a Patent**

**22.** (1) The patent shall entitle the patentee to exclude others from industrially producing the subject matter of the invention, putting it on the market, offering it for sale or using it or importing or possessing it for the said purposes. The effect of the patent shall not extend to studies and trials as well as to the consequential practical requirements, as far as they are necessary to obtain a permission, authorization or registration for putting on the market pharmaceutical products.

(2) If the patent has been granted for a process, it shall be effective to the products directly obtained by such process.

(3) The patent shall further have the effect that any third party, without the consent of the patentee, shall be prohibited from offering or delivering means relating to an essential element of the invention for use of the invention to others than those persons entitled to use the invention, if the third party knows, or if it is obvious due to the circumstances, that the means are suited and intended to be used for the use of the invention.

(4) Subsection 3 shall not apply, if these means are products generally available on the market, unless the third party deliberately causes the supplied party to act in a way forbidden according to subsection 1.

(5) Persons, who do not industrially conduct the actions mentioned in subsection 1, shall not be regarded as persons entitled to use the invention under subsection 3.

**22a.** (1) The extent of the protection conferred by a published patent application or by a patent shall be determined by the claims. Nevertheless the description and drawings shall be used to interpret the claims. The Protocol on the Interpretation of Article 69 of the European Patent Convention shall be applied *mutatis mutandis*.

(2) For the period up to the grant of the patent, the extent of protection conferred by the application shall be determined by the claims last filed which are part of the publication pursuant to section 101. However, the patent as granted or amended in opposition or nullity proceedings shall determine retroactively the protection conferred by the application, in so far as such protection is not thereby extended.

**22b.** (1) The protection conferred by a patent on a biological material possessing specific characteristics as a result of the invention shall extend to any biological material derived from that biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.

(2) The protection conferred by a patent on a process that enables a biological material to be produced possessing specific characteristics as a result of the invention shall extend to biological material directly obtained through that process and to any other biological material derived from the directly obtained biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.

(3) The protection conferred by a patent on a product containing or consisting of genetic information shall extend to all material, save as provided in section 1 (3) 2 and 3, in which the product is incorporated and in which the genetic information is contained and performs its function.

**22c.** (1) The protection referred to in section 22b shall not extend to biological material obtained from the propagation or multiplication of biological material placed on the market in the European Economic Area by the patentee or with his consent, where the propagation or multiplication necessarily results from the application for which the biological material was marketed, provided that the material obtained is not subsequently used for other propagation or multiplication.

(2) By way of derogation from section 22b, the sale or other form of commercialization of plant propagating material to a farmer by the patentee or with his consent for agricultural use implies authorization for the farmer to use the product of his harvest for propagation or multiplication by him on his own farm, the extent and conditions of this derogation corresponding to those under Article 14 of Regulation (EC) No. 2100/94.

(3) By way of derogation from section 22b, the sale or any other form of commercialization of breeding stock or other animal reproductive material to a farmer by the patentee or with his consent implies authorization for the farmer to use the protected livestock for an agricultural purpose. This includes making the animal or other animal reproductive material available for the purposes of pursuing his agricultural activity but not sale within the framework or for the purpose of a commercial reproduction activity. For said authorization an adequate compensation shall be paid.

(4) Section 22b shall not apply to biological material obtained accidentally or technically unavoidable in the agricultural sector. Thus, a farmer cannot be claimed against, if he did not cultivate seed or seed stock protected by a patent.

**23.** (1) The patent shall have no effect against persons, who, already at the time of filing of the application, used the invention in Austria or took measures necessary for such use in good faith (prior user).

(2) The prior user shall be entitled to exploit the invention for the requirements of his own business in his own workshops or in those of others.

(3) This entitlement may be inherited or sold only in conjunction with the business.

(4) The prior user may claim his entitlement to be acknowledged by the patentee by issuing a certificate. If such acknowledgment is refused, the Patent Office, upon request, shall decide on the claim raised in a proceeding according to that provided for a contestation action. On request of the entitled person, the acknowledged entitlement shall be entered in the Patent Register.

**24.** and **25.** (*Cancelled; Federal Law Gazette 1996/181*)

**26.** The effect of a patent does not extend to vehicles and accessories of vehicles which enter Austria only temporarily in the course of their use in traffic.

### **Relationship of Co-Patentees**

**27.** (1) A patent applied for by several persons as joint-inventors shall be granted without any determination of each person's share.

(2) The legal relationship of the co-patentees shall be governed by civil law.

(3) The right to allow third persons the use of the invention shall, in case of doubt, be asserted only jointly by the co-patentees; however, each co-patentee shall have the right to solely prosecute infringements of the patent before court.

### **Term of the Patent**

**28.** (1) The maximum term of the patent shall be 20 years from the date of the filing of the application.

(2) Additional patents shall expire with the parent patent. An additional patent may, however, be expressly maintained as an independent patent, if the parent patent has been revoked, declared of forfeiture, declared null and void or waived. In respect of the term, the due date and the amount of the annual fees the additional patent that has become independent shall replace the parent patent.

**29.** *(Cancelled; Federal Law Gazette 1996/181)*

### **Patentee's Obligation to comply with Legal Provisions**

**30.** A patent shall not release the patentee from the obligation to observe legal provisions.

**31.** (1) The patentee may work the invention commercially from the day of the announcement of the grant of the patent according to the extent of protection derived from the patent specification, without being bound to the provisions for obtaining a trade license. The privilege shall cover the production, the putting on the market and offering for sale of the subject matter of the invention. If the subject matter of the invention is a process, the privilege shall also cover the use of that process.

(2) In case of co-patentees, the privilege shall apply only to those, who own at least a quarter of the patent.

(3) If the privilege is claimed by one person at a time at which not more than four persons are entitled to the patent, it shall be assumed, until proven otherwise, that such person fulfills the requirements of subsection 2. Section 27 (2) shall not be affected thereby.

(4) If the patent has been revoked, declared null and void or the patentee has been declared not to be entitled to the patent, the invention, from that time, may commercially be worked only on the basis of the trade license required for the activity concerned. The same shall apply for any commercial exploitation no longer covered by the patent's extent of protection, if the patent has been partially revoked or if there has been a declaration of partial nullity or partial lack of title. If, however, the patent expires (section 46) or is declared of forfeiture (section 47), the privilege under subsection 1 shall continue to exist if claimed prior to the expiry or declaration of forfeiture of the patent.

**32.** (1) Anyone wishing to make use of the privilege under section 31 (1) shall notify the district administrative authority under whose jurisdiction the privilege is to be exercised not later than on the date the working of the invention is started.

(2) In the notification the patentee shall indicate his residence and nationality as well as the place where the invention is to be worked. The notification shall be accompanied by the patent specification and an excerpt from the Register that is not older than one month (section 80 (6)).

(3) A revocation, declaration of nullity or lack of title of a patent for an invention, notification of whose exploitation was made under subsection 1, has to be reported to the district administrative authority within one month from the entry into force of the decision. If a declaration of partial revocation, partial nullity or partial lack of title has been made, a certified copy of the text of the decision shall also be submitted.

(4) Notifications under subsection 3 shall be obligatory for any person who works the invention at the time of the events referred to in subsection 3.

(5) Persons, who close a business carried out under claim of the privilege of section 31, shall notify the competent district administrative authority within one month.



(6) Anyone failing to submit the notifications under subsection 1, 3 or 5 in time shall be guilty for an administrative offence and shall be punished by the district administrative authority by a fine not exceeding 1 090 Euro.

### **Transfer**

**33.** (1) The right arising from a patent application and the patent right shall be inheritable; such rights shall not pass to the state.

(2) Both rights may be transferred to others, either wholly or in proportionate shares, by a legal transaction, by a court decision or by a transfer mortis causa.

(3) If the right arising from a patent application is transferred, the patent shall, if granted, be issued to the applicant's successor in title. The provisions of section 43 (5) to (7) shall apply *mutatis mutandis*.

### **Liens**

**34.** The right to a patent may be subjected to a lien.

### **Voluntary Licenses**

**35.** The patentee may permit third persons to use the invention in all the territory or in a part thereof covered by the patent, with or without the exclusion of other persons entitled to use the invention (license).

### **Compulsory Licenses**

**36.** (1) If a patented invention cannot be exploited without violating an invention patented with a better priority (earlier patent), the patentee of the later patent shall be entitled to a non-exclusive license to the earlier patent, if the invention protected by the later patent constitutes an important technical progress of considerable economic significance compared with the invention protected by the earlier patent. If such a license is granted, the patentee of the earlier patent shall also be entitled to a non-exclusive license to the later patent.

(2) If a plant breeder cannot acquire or exploit a plant variety right without infringing an invention patented with a better priority (earlier patent), he shall be entitled to a non-exclusive license to the patent, if the plant variety constitutes a significant technological progress of considerable economic interest compared with the invention protected by patent, and if such a license is required to exploit the plant variety to be protected.

(3) If the owner of a patent concerning a biotechnological invention is granted a non-exclusive license to a plant variety protected by a plant variety right granted with a better priority (earlier plant variety right), because he cannot exploit the biotechnological invention without infringing an earlier plant variety right, the owner of the earlier plant variety right shall be entitled to a non-exclusive license to the later patent to exploit the protected invention.

(4) If a patented invention is not worked to an adequate extent in Austria – working of the invention may also be effected by imports – and if the patentee has not undertaken everything necessary for such working, anyone shall be entitled to a non-exclusive license to work the patent for the purposes of his business, unless the patentee proves that the working of the invention in Austria cannot reasonably be expected at all or on a larger scale than actually effected due to the difficulties opposing such working.

(5) If the grant of a license to a patented invention is in the public interest, anyone shall be entitled to a non-exclusive license to the invention for purposes of his business. The respective entitlement of the federal administrative authorities, however, shall not be bound to any business.

**37.** (1) If the person entitled to grant a license pursuant to section 36 refuses to grant such a license, although the license applicant has taken efforts to obtain his authorization within a reasonable period of time and on reasonable commercial terms and conditions, the Patent Office, on request of the license applicant, shall decide in accordance to the procedural provisions provided for the contestation of patents. In case a license is granted, an adequate compensation shall be determined, wherein the economic value of the license is to be taken into consideration. The security, if necessary, as well as the other conditions of use shall be determined considering the nature of the invention and the circumstances of the respective case. The extent and the duration of the license according to section 36 shall predominantly be granted for the supply of the Austrian market and shall be limited to the purpose requiring the license. In the case of semiconductor technology, the license shall only be granted for public noncommercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive.

(2) The grant of a license pursuant to section 36 (4) shall not be applied for until four years from the filing of the application or three years from the announcement of the grant of the patent for which the license is sought, whichever period expires last.

(3) The requirement to obtain the authorization from the person entitled to grant a license may be disregarded in the case of section 36 (5) in the case of a national emergency or other circumstances of extreme urgency. In this case, a preliminary permission to use the invention shall be granted by way of an interim decision.

(4) A license granted pursuant to subsection 1 shall be terminated upon request, subject to adequate protection of the legitimate interests of the persons so authorized, if and when the circumstances which led to it cease to exist and are unlikely to recur. The Patent Office shall decide on this request in accordance to the procedural provisions provided for the contestation of patents.

(5) In proceedings concerning the grant or the termination of licenses according to section 36 (2) and (3) a technically qualified member has to belong to every Senate of the Nullity Department and a technically qualified and a legally qualified member to every Senate of the Supreme Patent and Trademark Chamber, who are nominated according to section 20 (3) of the Law on the Protection of Plant Varieties 2001, Federal Law Gazette I No. 109, upon proposal of the Federal Minister for Agriculture, Forestry, Environment and Water Management in agreement with the Federal Minister for Transport, Innovation and Technology.

#### **Transfer of a License**

**38.** Licenses according to sections 35 and 36 (2) to (5) as well as to the later patent according to section 36 (1) shall not, without the patentee's consent, be transferred inter vivos except together with the part of the enterprise or goodwill which enjoys such license, and shall not pass on death to the licensee's successor in title unless the latter continues the part of the enterprise or goodwill which enjoys the license. A license to the earlier patent granted according to section 36 (1) shall not be transferable except together with the later patent.

**39. to 42.** (*Cancelled; Federal Law Gazette 1996/181*)

#### **Entry in the Patent Register**

**43.** (1) A patent right (section 33), a lien and other rights in rem relating to patent rights shall be acquired and binding on third parties upon entry in the Patent Register.

(2) The date of acquisition of license rights shall be governed by the provisions of civil law. The license rights shall be binding on third parties only on their entry in the Patent Register.

(3) The rank of the above-mentioned rights shall be determined by the order in which requests for entry have reached the Patent Office, provided that such requests lead to entry.

(4) Simultaneously received requests shall have the same rank.

(5) The entries in the Patent Register under subsection 1 and 2 as well as any entry of lapse of the titles to patent rights entered in the Patent Register shall be made at a written request by one of the parties or at a request of courts.

(6) A request for such entry shall be accompanied by the original or a duly certified copy of the document on which the entry is to be based. If the document is not a public document, it shall bear the duly certified signature of the person alienating his right.

(7) The request for entry and the document shall be subject to the examination by the Patent Office on form and contents.

#### **Encumbrances**

**44.** Any person acquiring a patent shall assume the encumbrances, which have been entered in the Patent Register or have been duly filed for entry, at the time the request for entry is submitted to the Patent Office.

#### **Entries relating to Disputes**

**45.** (1) Disputes pending before the courts concerning the ownership of patents, of liens or other rights in rem to patents as well as disputes concerning the claim to be designated as inventor (section 20 (5) and (6)), the entitlement to prior use (section 23) and the grant of compulsory licenses (section 36), concerning opposition (section 102), declaration of forfeiture (section 47), declaration of nullity (section 48), declaration

of lack of title (section 49) and declaration of dependence (section 50) shall, on request, be recorded in the Patent Register (entry relating to disputes).

(2) The effect of entry of a dispute shall be to render the decision fully effective also against those persons whose own entries in the Patent Register were effected only after the Patent Office had received the request for entry of the dispute.

#### **Expiration**

**46.** (1) A patent shall expire

1. at the latest at the end of the maximum term, provided the annual fees have been paid in time;
2. if the annual fee due has not been paid in time;
3. if the patentee waives the patent.

(2) If only parts of the patent are waived, the patent shall remain valid with regard to the remaining parts, provided that the latter are still able to constitute the subject matter of an independent patent.

(3) Expiration shall be effective as of the day following the end of the maximum term in case of subsection 1 no. 1, the day following the end of the last year of validity in case of subsection 1 no. 2 and the day following notification of waiver to the Patent Office in case of subsection 1 no. 3.

#### **Declaration of Forfeiture**

**47.** (1) The forfeiture of a patent in whole or in part shall be declared, if the grant of compulsory licenses (section 36 (4)) has not sufficed to secure the working of the invention in Austria to an adequate extent. Forfeiture shall become effective as soon as the decision becomes legally binding.

(2) Forfeiture shall not be declared until two years from the effective grant of a compulsory license. The declaration of forfeiture is not allowed, if the patentee proves that due to the difficulties facing the working of the invention, he cannot reasonably be expected to work or have worked the invention in Austria at all or to a greater extent than it has been worked.

#### **Declaration of Nullity**

**48.** (1) A patent shall be declared null and void if:

1. the subject matter of the patent is not in compliance with sections 1 to 3,
2. the patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art,
3. the subject matter of the patent extends beyond the contents of the application in the version as originally filed determining the day of filing,
4. the biological material deposited according to section 87a (2) 1 has not been permanently available either at the original depositary institution as defined by the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure dated April 28, 1977, Federal Law Gazette No. 104/1984, (Budapest Treaty) or at another depositary institution to which it has been passed on under this Treaty, unless the patentee proves
  - a) that he deposited the biological material again and that the new deposit is deemed, under Article 4 of that Treaty, to have been made on the day of the original deposit, or
  - b) that he was prevented from making a new deposit by an unforeseeable or unavoidable event and that he made such a deposit within two months after the impediment had ceased to exist.

(2) If the grounds of nullity apply only in part, the nullity shall be declared by limiting the patent accordingly.

(3) The legally binding declaration of nullity shall be retroactive to the day of filing in the cases of subsection 1 no. 1 to 3, to the day on which the depositary institution noticed for the first time its inability to furnish samples of the biological material in case of subsection 1 no. 4. If the subject matter of the patent was not patentable under section 3 (2), the license rights lawfully granted by the later applicant and acquired in good faith by third parties, registered in the Patent Register for one year and not the subject of any legally founded entry relating to disputes (section 45), shall remain, however, unaffected by such retroactive effect, irrespective of any claims for compensation arising therefrom against the later applicant.

### **Declaration of Lack of Title**

**49.** (1) A patentee shall be deprived of a patent if it has been proven

1. that the patentee was not entitled to the grant of the patent (section 4 (1), sections 6 and 7);
2. that the substantial contents of the application had been taken from the descriptions, drawings, models, implements or installations of a third person or from a process used by said third person without consent of the latter.

(2) If one of these conditions (subsection 1 no. 1 and 2) applies only in part, the patentee shall be deprived of his patent only partially.

(3) In the first case, only the person entitled to the grant of the patent shall have a right to a declaration of lack of title, in the second case only the injured party and a claim against a bona fide patentee shall become statute-barred after three years from the entry of the patent in the Patent Register.

(4) Mutual claims for compensation and reimbursement arising from a declaration of lack of title shall be governed by civil law and asserted by way of civil proceedings.

(5) Instead of a declaration of lack of title the assignment of the patent may be requested. If the claim for assignment exists only regarding a share of the patent, the patent shall be assigned in shares. If no assignment is requested and the lack of title is declared for the entire patent, the patent protection shall end once the decision declaring a lack of title becomes legally binding. If the assignment of the patent is requested, the patentee may waive the patent only with the petitioner's consent until the decision becomes legally binding.

(6) In the case of such assignment, the licensing rights lawfully granted by the earlier patentee and acquired in good faith by third parties, entered in the Patent Register for one year and not the subject of any legally founded entry relating to disputes (section 45), shall remain binding on the new patentee, irrespective of any claims for compensation arising therefrom against the earlier patentee.

(7) The request for a declaration of lack of title or assignment may already be filed before the patent is granted as to the patent application, with subsection 1 to 5 to be applied *mutatis mutandis*. The request shall be dealt with pursuant to the procedural provisions governing the declaration of lack of title of a patent. If an assignment of the patent application is requested, the application proceeding shall be interrupted until a legally binding decision about the request is made and may be continued only with the applicant's consent before that time.

### **Declaration of Dependence**

**50.** The owner of a patent having an earlier priority date or of a utility model having an earlier priority date within the meaning of the Utility Model Law may request the Patent Office for a decision that the commercial use of a patented invention requires the full or partial use of his invention. The Patent Office shall decide on such a request in accordance to the procedural provisions governing contestation proceedings.

### **Right of Retaliation**

**51.** Retaliatory measures may be provided for by order of the Federal Government against nationals of a foreign state which accords no protection or incomplete protection to inventions of Austrian citizens.

### **Time Limits**

**52.** (1) If a time limit is not prescribed by law or order, the Office shall specify such time limit taking into account the requirements and the nature of each case, unless the President of the Patent Office has issued provisions on the extent of such time limits (section 99 (6) third sentence).

(2) Unless provided otherwise, the time limits prescribed by law or order shall not be extendable. The time limits specified by the Office may be extended.

**53.** (1) Time shall begin to run from the event determined by law or order, on which the beginning of the time limit is to be based, or, unless provided otherwise when the limit was set, from the date when the decision or instruction setting the time limit was served on the party or, if the decision or instruction was not served but pronounced, from the date of pronouncement.

(2) When calculating a time limit fixed by days, the day shall not be taken into account, on which the event, the service or the pronouncement, on which the beginning is based, occurs.

(3) Time limits expressed in weeks, months or years shall end with the expiration of the day of the last week or the last month, which in name or number corresponds to the day on which the time limit began to run. If there is no such day in the last month, the time limit shall end at the expiration of the last day of that month.

**54.** (1) The beginning and the running of time limits shall be unaffected by Sundays and public holidays.

(2) If the end of a time limit falls on a Sunday or a public holiday or on a working day, on which the mail reception center of the Patent Office is closed, the next working day shall be deemed to be the last day of the time limit.

(3) In case of submissions posted in Austria, the days until the receipt at the Patent Office are not taken into consideration with regard to the computation of the time limit. This shall not apply in cases where the day of receipt of a submission at the Patent Office is the relevant day (section 102 (1) and section 129 (3)).

**55.** If the time limits allocated to several persons involved in one and the same matter for doing one and the same act, such act by me done by any of these persons as long as the time limit for doing such act is still open to one of them.

**56.** If a submission comprises several industrial property rights (patents, trademarks, designs) or applications for such rights, the lodging of separate submissions may be ordered for each or any of these rights (applications) upon setting a time limit therefor. The separate submissions shall, if received in time, be deemed to have been received on the day of receipt of the original submission. Section 163 (4) shall remain unaffected.

## **II. PATENT AUTHORITIES AND PATENT INSTITUTIONS**

### **Scope of the Patent Office's activity**

**57.** (1) The Patent Office shall be responsible for the grant of patents, revocations, declarations of forfeiture, declarations of nullity, declarations of lack of title, declarations of dependence, for decisions on the claim to be designated as inventor (section 20), decisions on the entitlement to prior use (section 23), for the grant of licenses (section 36), for decisions on the request for a declaratory decision (Section 163) as well as for rendering services and providing information in the field of the protection of intellectual property (sections 57a, 57b) and for all entries in the Patent Register.

(2) In the interest of international cooperation in the field of the protection of industrial property, agreements may be made by the Patent Office providing to states or international governmental or non-governmental organizations dealing with matters in that field technical or legal assistance free of charge or for adequate compensation. Services free of charge shall be agreed upon only, if such assistance is in the public interest, is given for purposes of development aid or incurs only insignificant costs.

### **Services and Information Provided by the Patent Office**

**57a.** The Patent Office shall, upon request, provide in writing

1. searches on the state of the art concerning a concrete technical problem, and
2. expert opinions as to whether an invention is patentable according to sections 1 to 3 exists in view of the state of the art cited by the applicant or to be searched by the Patent Office.

**57b.** The Patent Office shall extend its services and information, developing, in particular, its documentation for the purpose of an easier accessibility and providing better information to the public in all relevant fields.

### **Seat and Structure of the Patent Office**

**58.** (1) The Patent Office is a federal authority and shall have its seat in Vienna. It shall be the Central Austrian Authority for the protection of industrial property. The activities of the Patent Office shall be consistent with the obligations for objectivity and equal treatment arising from its position as a federal authority under public law.

(2) The Patent Office shall be comprised of a President, a Vice-President responsible for the Legal Division and a Vice- President responsible for the Technical Division, as well as the legally qualified and technically qualified members and other employees necessary to fulfill its responsibilities.

(3) Irrespective of the Vice-Presidents' responsibilities for their respective divisions, the President shall be in charge of the management of the Patent Office; he shall also be the manager (director) of the partial legal entity (sections 58a and 58b).

(4) The legally qualified members shall have completed a university degree in law. The technically qualified members shall have completed a university degree in technology or natural science. In addition, the pertinent regulations for officials and of employment shall apply for the appointment of the members.

(5) The Vice-Presidents should have the formal qualifications prescribed for members of the Patent Office (the technical Vice- President those of a technically qualified member, the legally qualified Vice-President those of a legally qualified member) or equivalent knowledge.

**58a.** (1) The Patent Office shall be a juridical personality (partial legal entity) to the extent that it is entitled to acquire property and rights by providing services and information in the field of protection of industrial property:

1. written information and information by means of electronic data carriers and media on data concerning filed and registered industrial property rights,
2. statistical evaluations of data in the field of protection of industrial property,
3. providing searches on the state of the art and expert opinions on the patentability of inventions for persons, enterprises, states or international governmental or non-governmental organizations dealing with matters in the field of protection of industrial property,
4. providing searches on registered industrial property rights and on consulting services in connection with patent evaluations by applying established evaluation standards,
5. written information and information by means of electronic data carriers and media as part of trademark application proceedings as well as on the basis of separate requests as to whether a specific sign is identical or possibly similar to filed or registered trademarks ("similarity searches"),
6. translations of lists of goods and services for the international registration of trademarks,
7. classification of video components of marks for domestic or international governmental and non-governmental organizations dealing with tasks in the field of protection of industrial property,
8. distribution of information and information services in the field of protection of industrial property,
9. production, editing, distribution and procurement of printed documents, software and prerecorded sound, video and data carriers as well as
10. exhibitions, seminars and similar events.

(2) Following approval by the Federal Minister for Transport, Innovation and Technology, the President of the Patent Office shall specify by order the services and information of the Patent Office defined in subsection 1 and the terms under which they are to be rendered by its partial legal entity. In this connection care shall be taken that the specified services and information are suitable to be rendered by the partial legal entity and that secrecy interests which are worthy of protection are not violated.

(3) The partial legal entity of the Patent Office shall also be entitled,

1. to confer activities under subsection 2, accounting and other property, personnel and inventory administration within its partial legal capacity as well as auxiliary activities within the Patent Office administration to third parties, in particular also to administrative bodies of the Federation, against reimbursement of expenses funded by the partial legal capacity,
2. to make legal transactions in connection with the activities under no. 1, and
3. under approval of the Federal Minister for Transport, Innovation and Technology, acquire membership of associations, other legal persons or intergovernmental organizations, if this is in the interest of promoting the protection of industrial property.

(4) The Patent Office shall be entitled to cover the expenses necessary to perform its duties including investments from the property and the rights it has acquired by its partial legal entity. Additional proceeds (profits) shall be paid to the Federal Government after the formation of adequate reserves. The Federal Government shall not be liable for any obligations arising from the activity of the Patent Office's partial legal entity.

**58b.** (1) Insofar as the Patent Office acts within the scope of section 58a, it shall see to follow a policy in accordance with the principles of an orderly businessman. The annual balance of accounts shall

be submitted to the Federal Minister for Transport, Innovation and Technology as well as to the Federal Minister of Finance. Moreover, the Federal Minister for Transport, Innovation and Technology shall be entitled to inspect the books and accounts at any time.

(2) The Federal Minister for Transport, Innovation and Technology shall be entitled to examine the books and accounts of the partial legal entity for their compliance with the existing legal provisions and for the correctness of the figures.

(3) Employment contracts and contracts for work made by the partial legal entity of the Patent Office under subsection 1 shall be governed by those laws which are applicable with respect to the type of work. Thereby an employment relationship with the Federal Government is not established.

(4) The rules and regulations on the exercise of trade shall not apply to the activities of the Patent Office under section 58a.

(5) The partial legal entity of the Patent Office shall be represented by its manager. He may authorize other with responsibility entrusted persons to make certain legal transactions of the partial legal entity. In this connection the Patent Office shall have a name which indicates its own juridical personality. By providing services and information according to section 58a (1) and in particular also on any commercial communication in this regard, any reference to a governmental or official function shall be avoided. By providing services and information, customers shall be informed before making a contract that such services of the partial legal entity are exclusively based on private law and without any governmental authorization including the legal consequence of section 58a (4) last sentence.

(6) Insofar as the partial legal entity uses general terms of business to furnish its services, the terms shall be subject to approval by the Federal Minister for Transport, Innovation and Technology in agreement with the Federal Minister of Economy, Family and Youth.

**59.** (*Cancelled; Federal Law Gazette I 2004/149*)

#### **Divisions of the Patent Office**

**60.** (1) The Patent Office shall comprise the departments, provided for fulfilling its tasks, and the necessary further organizational units.

(2) The number of departments and organizational units, their field of responsibilities and their personnel resources shall be determined by the President according to the relevant requirements.

(3) Irrespective of the duties conferred on these departments and organizational units by further legal provisions, the responsibilities are as follows:

1. the Technical Department for the proceedings concerning the grant of patents, the opposition proceedings, the proceedings concerning waiving and the providing of written searches and expert opinions;
2. the Legal Department for proceedings regarding matters related to the transfer of the right arising from an application, and to other legal dispositions relating to such a right, to granted patents or to requests for the restoration of rights, to the extent that the Technical Department or the Appeal or Nullity Department are not responsible for those matters,
3. the Appeal Department for the appeal proceedings (section 70),
4. the Nullity Department for the proceedings relating to the requests for declaration of forfeiture, of nullity, of lack of title, of dependency, for designating a person as inventor under section 20 (5), for the recognition of the entitlement of prior use, for declaratory decisions and for the grant of compulsory licenses.

**61.** (1) The President shall divide the whole field of technology into patent classes and, if necessary, further subdivide the latter; he shall allocate the patent classes or subclasses to the Technical Departments according to the relevant requirements.

(2) To the Technical Departments technically qualified members, to the Legal Departments legally qualified members shall be appointed. To the Appeal and Nullity Department legally qualified and technically qualified members shall be appointed. The members of the Technical Departments and the Legal Departments may as well be appointed to the Appeal and Nullity Department.

(3) The President shall appoint among the members of the Appeal and Nullity Department the necessary number of chairpersons and among the members of the other departments heads to manage and supervise the office procedure and shall make dispositions with reference to persons acting as their deputies.

(4) A legally qualified member shall be assigned to every Technical Department for participation in decisions of a senate or for submission of opinions (section 62 (4)). The same legally qualified member may be assigned to several Technical Departments.

(5) The allocation of duties in the Technical Departments and in the Legal Departments shall be determined by the head of the respective department.

(6) In the Appeal and Nullity Department the various cases shall be assigned to the chairpersons by the President. In doing so the load of work and, with respect to the technically qualified chairmen, also the technical field concerned in each individual case shall be taken into account.

### **Decision Making in the Departments**

**62.** (1) Decisions and instructions within the competence of the Technical Department shall reside with the technically qualified member (examiner) competent according to the allocation of duties, unless provided otherwise in subsection 3 and 4.

(2) Decisions and instructions in matters of patent protection within the competence of the Legal Department shall be the responsibility of the member assigned to the Technical Department (section 61 (4)), whose patent classes or subclasses comprise the patent or the application in question (section 61 (1)). If several patents or patent applications are affected by such matter, that member shall be competent, which, pursuant to section 61 (5), is competent for the patent or patent application listed first in the request.

(3) Decisions on the complete or partial rejection of an application according to section 100 (1) and on the opposition shall be made by three members of the Technical Department, two of whom shall be technically qualified members. The head of the department and the examiner shall be members of the board. The head of the department shall have the chair.

(4) The legally qualified member assigned to the Technical Department shall participate in the making of decisions under subsection 3 with the right to vote, or the examiner, if decision making resides solely with him (subsection 1), shall seek the opinion of the legally qualified member, where

1. patentability is to be decided upon with respect to industrial application or on the grounds of section 2,
2. priority rights (sections 93 to 95) are to be decided upon whose legal requirements are doubtful or contested,
3. witnesses or experts are heard or an inspection has to be made,
4. disciplinary penalties or penalties for wanton acts are to be decided upon.

(5) If, at a meeting of the Technical Department consisting of three technically qualified members, the majority takes the view that a decision is to be made also on one of the questions raised under subsection 4, the legally qualified member assigned to the Technical Department shall participate in the decision making in place of one of the technically qualified members.

(6) As far as the composition of the board is not determined by subsection 3 to 5, it shall be decided on by the head of the Technical Department. In doing so, the technical field concerned shall be taken into consideration in each particular case.

(7) Prior to deciding upon matters falling within the responsibility of the Legal Department (section 60 (3) 2) and in which technical questions may be of importance, the legally qualified member shall seek the opinion of the competent technically qualified member.

**62a.** (1) By order of the President employees, who are not members of the Patent Office, may be authorized to deal with issues to be clearly specified in their kind concerning applications and granted patents, as far as this is appropriate due to the simplicity of the settlement and the training of the authorized employees guarantees proper handling. These employees shall be bound by the instructions of the member competent according to the allocation of duties. The latter shall have the right to reserve or to draw acts to him at any time.

(2) The decisions made by employees authorized under subsection 1, may be appealed like those of the competent member.



**63.** (1) The Appeal and Nullity Department shall make their final decisions in the following composition including the chairperson:

1. the Appeal Department comprised of three technically qualified members and one legally qualified member unless where appeals against decisions of a legally qualified member are concerned; in the latter case decisions shall be made by three members, two of whom shall be legally qualified members;
2. the Nullity Department comprised of two legally qualified and three technically qualified members.

(2) The chairperson of the Appeal Department shall be legally qualified where appeals against decisions of a legally qualified member are to be decided upon.

(3) For interim decisions in the Appeal and Nullity Department the presence of three members shall be sufficient.

**64.** (1) For decisions of the board the simple majority shall suffice. In case of a tie the chairperson shall have the casting vote.

(2) The decisions of the Patent Office shall be accompanied by a statement of reasons. Where a request in an ex parte proceeding before the Technical Department or the Legal Department is fully approved, the statement of reasons may be omitted. All documents shall be issued in writing and ex officio or telegraphically, by telex or by fax served on all parties concerned. Written copies may be transmitted by way of automation-supported data transfer or in any other technically possible way, if

1. the party permissibly made submissions in the same way and did not expressly object to this way of transmission to the office, or
2. the party expressly agreed to this way of transmission.

(3) The approval to a document shall be given by signature of the approving person. However, it can be refrained therefrom, if it is secured that the person giving the approval can be ascertained in another way.

(4) The form and the type of documents as well as of the copies shall be regulated by order of the President of the Patent Office.

(5) For written copies, which are made in an automation-supported way or are transmitted telegraphically, by telex, by fax, by way of automation-supported data transfer or in any other technically possible way, neither a signature nor legalization shall be necessary.

**65.** (1) Instructions for preparing a decision of the Technical Department shall be made by the examiner. Except where it is only a question of eliminating formal deficiencies from submissions or of correcting a submitted description, a record shall always be made on the hearing of parties, witnesses or experts.

(2) Decisions shall be made on the basis of a substantiated petition in writing. Amendments decided upon at the meeting shall be entered in the draft version of the petition. If the decision substantially deviates from the petition, the draft shall be redrafted in agreement with the member whose petition led to the decision.

(3) Each member of the board may change his opinion until closure of a meeting. If, as a result, a decision made no longer enjoys the majority of votes, a new vote shall be taken.

(4) If there is no unanimity in the board regarding the decision or the reasons for the decision, a record shall be drawn up, in which the opinions of the members of the board and the proportion of the votes are indicated. Otherwise an annotation on the votes to be signed by all members of the board shall be sufficient.

**66.** The boards of the Appeal and Nullity Department shall be composed of by the chairperson from case to case. In doing so, the load of work, and with respect to the technically qualified members, the technical field concerned in each particular case shall be taken into consideration.

#### **Official Robe**

**67.** (1) At all oral proceedings the members of the Appeal and Nullity Department shall wear official robes. Further details as to the kind and wearing of the official robe shall be regulated by order of the President of the Patent Office.

(2) The representatives of the parties referred to in section 77 shall be entitled to wear their official robes when they intervene in oral proceedings of the Appeal and Nullity Department and of the Supreme Patent and Trademark Chamber.

## **Office Procedure**

**68.** The office procedure shall be regulated in detail by order of the President of the Patent Office with a view to enabling regular and rapid operation and under consideration of the tasks incumbent upon the Patent Office. The order shall also determine how submissions shall be made directly to the Patent Office and at what time they are deemed to be received by the Patent Office. The submissions shall be marked with the day of receipt.

**69.** Against the decisions of the President, to which the latter is entitled under this Federal Law, an appeal shall be admitted only if expressly provided by this Federal Law. Section 2 (2) of the Law on Administrative Procedure 1984, Federal Law Gazette No. 29, shall not be affected.

### **Appeals against Decisions of Departments**

**70.** (1) Decisions passed by the Technical Department and by the Legal Department may be contested by appeal.

(2) Against the decisions (interim and final decisions) of the Appeal Department no appeal may be made to the High Administrative Court. Against final decisions of the Appeal Department appeal may be lodged with the Supreme Patent and Trademark Chamber.

(3) Against final decisions of the Nullity Department appeal may be lodged with the Supreme Patent and Trademark Chamber as the highest instance.

(4) The instructions of the referee preparing a decision of a Technical Department or a Legal Department or a decision of the Appeal or Nullity Department shall not be separately appealable.

(5) Likewise, interim decisions of the Nullity Department – except decisions to suspend the proceeding – may not be separately appealed; however, an amendment of the referee's preparatory instructions (subsection 4) as well as interim decisions of the Legal Department or the Nullity Department may be requested at the respective departments.

### **Appeal against Decisions of the Technical Department and the Legal Department**

**71.** (1) The appeal shall contain a substantiated petition for appeal and shall be filed with the Patent Office within two months from the date when the decision was served.

(2) If the appeal proceeding is to be carried out with an opposing party, the submission to the Patent Office shall also be accompanied by a copy of the appeal and its enclosures for each opposing party.

(3) Belated appeals shall be dismissed by the department being competent in first instance. Belated appeals against decisions of the authorized employee shall be dismissed by the competent member. Inadmissible appeals or appeals not complying with other legal requirements shall be dismissed by the Appeal Department without any further proceedings; however, in the case of deficiencies, an appeal shall be dismissed only after the appellant has failed, on instruction, to eliminate the deficiencies.

(4) The department of first instance, which passed the decision, may decide on the appeal within two months following its timely receipt by preliminary decision on the appeal. It may dismiss the appeal as inadmissible, rescind the decision it has passed, or amend it in any direction. If the decision was made by an authorized employee, the competent member shall be competent to the preliminary decision on the appeal.

(5) Each party may, within two weeks after the preliminary decision on the appeal was served, file a petition with the department of first instance that the appeal be submitted to the Appeal Department for decision (request for submission). In the preliminary decision on the appeal the possibility of such a request for submission shall be pointed out. With receipt of the request for submission the preliminary decision on the appeal shall become invalid. The department of first instance shall notify the parties of the invalidation of the preliminary decision on the appeal. Belated or inadmissible requests for submission shall be dismissed.

(6) In appeal proceedings new facts and evidence shall be admissible only to support or disprove facts and evidence submitted in time in the first instance; this shall not preclude restriction or clarification of the claim for protection. The parties shall be given the opportunity of commenting upon the new facts submitted and on the results of any new procedure of taking evidence.

**72.** (1) For appeals against decisions of the Technical Department the chairperson shall appoint as referee from among the voting members a technically qualified member or, unless he himself is legally qualified, a legally qualified member, depending on whether mainly technical or legal questions are of

importance for the decision. For appeals against decisions of the Legal Department the chairperson shall appoint a legally qualified member as referee.

(2) The referee shall send a copy of the appeal with its enclosures to the opposing party requesting the latter to submit its objections within a time limit of at least two months, which time limit he shall extend on reasonable grounds. The referee, furthermore, shall also make the necessary instructions for the decision or for the oral proceeding, particularly in view of any possibly required further written correspondence or for the taking of evidence offered by the parties.

(3) After having carried out the preliminary proceedings, the referee shall submit to the chairperson the files including a written statement of all questions of fact and legal questions of relevance to the decision with a statement of his opinion (report). The chairperson may ask the referee or any other voting member to supplement the report.

**73.** (1) The chairperson may order an oral proceeding on the appeal. He shall order an oral proceeding upon request of the appellant or any opposing party possibly involved in the proceedings. The oral proceeding shall be in public. Section 119 (2) shall apply.

(2) The chairperson shall open the proceedings and shall convince himself of the identities of all persons appearing and shall verify their positions as parties and any powers of attorney. He shall conduct the oral proceeding without permitting digression or lengthiness in a manner so as to guarantee the parties' right to be heard.

(3) The chairperson shall determine the order in which the parties are to be heard, the evidence is to be taken and the results of previously taken evidence or investigations are to be submitted and discussed. The chairperson or any members of the board appointed by him shall discuss the matter with the parties as to facts and law.

(4) A record of the oral proceedings shall be taken by a clerk. Besides information on place, time and subject matter of the oral proceeding it shall include the names of the members of the board, the clerk, the parties, of their representatives, of the witnesses heard and of the experts as well as a summary on the contents and procedure of the oral proceeding. The record shall be signed by the chairperson and the clerk. Instead of appointing a clerk the chairperson may use a sound storage medium, whereupon the information mentioned in sentence 2 shall be included in the record in any case. A written transcript of the recording on the sound storage medium shall be made. This record shall be signed by the chairperson solely.

(5) The Appeal Department, as a rule, shall reach its own decision on the subject matter by independently evaluating the facts and evidence submitted. The Appeal Department may substitute its opinion for that of the Technical Department or the Legal Department both as to the decision and to the reasons and therefore amend the contested decision in any direction.

(6) Consultation and voting of the Appeal Department shall be effected in camera. Section 65 (3) and (4) shall apply *mutatis mutandis*. Discontinuance in proceedings shall be decided upon in writing by circular unless a member opposes.

(7) The referee shall draft the decision on the basis of the resolutions adopted. If he is in the minority with his view, he shall redraft the text of the decision in agreement with the member on whose petition the decision was based. The chairperson shall, however, be free to charge another member of the board with the preparation of the draft or parts thereof.

(8) The Fee Entitlement Law 1975, Federal Law Gazette No. 136, shall apply.

(9) In the appeal proceedings the parties shall bear the costs of the proceedings themselves.

#### **Supreme Patent and Trademark Chamber**

**74.** (1) The Supreme Patent and Trademark Chamber shall be the authority of appeals against final decisions of the Nullity Department of the Patent Office and authority of appeal against final decisions of the Appeal Department of the Patent Office. This Chamber shall consist of a president, a vice-president, at least eight further legally qualified members and of the required number of technically qualified members as counselors. During their term of office they shall have the title of "Counselor of the Supreme Patent and Trademark Chamber".

(2) The president and the vice-president shall be, or shall have been, members of the Austrian Supreme Court as president, vice-president, or chairperson of a senate thereof.

(3) The legally qualified members shall have completed a university degree in law and shall have held, for at least ten years, a profession for which completion of these studies is required. Moreover, they shall prove scientific or practical activity in the field of the protection of industrial property. At least three members shall be judges, at least three members shall be legally qualified employees in public service of the Federal Ministry for Transport, Innovation and Technology or legally qualified members of the Patent Office.

(4) The technically qualified members shall have completed a university degree in technology or in natural science, they shall have special knowledge in a particular field of technology and shall have reached the age of thirty.

(5) Only Austrian citizens of moral integrity and having full legal capacity shall be appointed as members.

(6) The members of the Supreme Patent and Trademark Chamber shall be appointed by the President of the Federal Republic for a period of five years; they may be reappointed. The appointment shall in no case prevent any member from voluntarily resigning from the Chamber upon entry into permanent retirement.

(7) The term of office shall end on December 31 of the year in which a member has reached the age of seventy. It shall also end if a member has lost Austrian citizenship, if his legal capacity has been restricted or if he has been sentenced to more than one year of imprisonment for a deliberately committed punishable act or if he has been convicted for a punishable act committed with the intent of enrichment.

(8) Members who are not employed under public law shall take the following oath before the president prior to exercising their duties: „I solemnly promise that I shall perform my duties conscientiously and impartially and that I shall maintain secrecy on anything that may come to my knowledge in the course of my official duties“. This oath shall be signed. In case of reappointment the reminder of the oath shall be sufficient.

(9) In fulfilling their duties the members shall be independent and shall not be bound to any instructions. The decisions of the Supreme Patent and Trademark Chamber shall not be annulled or amended by administrative procedures. The Federal Minister for Transport, Innovation and Technology shall be entitled to obtain information about any subject matter relating to the management of the Supreme Patent and Trademark Chamber.

(10) The clerks shall be appointed by the Federal Minister for Transport, Innovation and Technology from among the employees in public service of higher service of this Federal Ministry or of the Patent Office.

(11) The president of the Supreme Patent and Trademark Chamber in his capacity as the head of this authority shall be entitled to an annual special-duty pay of 300%, the vice-president of 150%, of the monthly salary of an employee in public service of salary level 1 of service class IX of the General Administration.

(12) All other members and clerks shall receive a special-duty pay in accordance with their respective duties,

- |                           |            |
|---------------------------|------------|
| a) referees (co-referees) | 8 to 40 %, |
| b) assessors              | 4 to 15 %, |
| c) clerks                 | 3 to 10 %  |

of the monthly salary referred to in subsection 11 for each individual case they participated in. The special-duty pays shall be awarded by the Federal Minister for Transport, Innovation and Technology upon proposal of the president at the end of the calendar year for all cases completed during the calendar year in question, with due regard to the time and work required for each individual case.

(13) The secretarial work of the Supreme Patent and Trademark Chamber shall be conducted by the Patent Office.

**75.** (1) The Supreme Patent and Trademark Chamber shall hold proceedings and make decisions under the chairmanship of the president or, in case the latter is unable to attend, of the vice-president in boards comprised of five members consisting of the chairperson, two legally qualified members and two technically qualified members. The boards shall be set up by the chairperson so as to include a legally qualified employee in public service and at least one judge. The chairperson shall appoint one member of the board as referee. If necessary, the chairperson may appoint further members of the board as co-referees.

(2) At all oral proceedings the members of the Supreme Patent and Trademark Chamber shall wear official robes. Further details as to the kind and wearing of the official robe shall be regulated by order of the President of the Patent Office.

#### **Reasons for Exclusion**

**76.** (1) Members of the Patent Office and of the Supreme Patent and Trademark Chambers shall be excluded from participation:

1. in matters in which they are themselves parties or in consideration whereof they have a joint right, joint liability or joint liability to recourse in respect of one of the parties;
2. in matters concerning their spouses or registered partners or persons related to them in direct line by consanguinity or marriage or related to them in collateral line up to the fourth degree or by marriage up to the second degree;
3. in matters concerning their adoptive or foster parents, adoptive or foster children, wards or persons under their care;
4. in matters in which they represent or have represented one of the parties or in respect of which they have had or may have a material advantage or loss;
5. in appeal proceedings in which the appeal has been made against a decision which they have participated in;
6. in case of any other important reason suitable to raise doubts as to their full impartiality.

(2) Members of the Supreme Patent and Trademark Chamber shall be excluded from participation in the Supreme Patent and Trademark Chamber in proceedings in respect of appeals against decisions of the Appeal Department, if they took part in the decision of the Technical Department or the Legal Department.

(3) A member of the Patent Office or of the Supreme Patent and Trademark Chamber who regards himself as excluded from participating in a decision (subsection 1 and 2) shall notify the head of department or the chairperson by stating his reasons. The head of department or the chairperson shall, if considering the reasons for exclusion as given, make the necessary arrangements for appointing a substitute member. If the reasons for exclusion apply to the head of department or the chairperson, notification shall be made to the President of the Patent Office in proceedings before the Patent Office, and to the president of the Supreme Patent and Trademark Chamber in proceedings before this Chamber. If one of these himself has the chair, his representative shall be notified.

(4) If, in proceedings before the Patent Office or the Supreme Patent and Trademark Department, a party pleads a reason for exclusion of a member, subsection 3 shall be followed.

#### **Representatives of the Parties**

**77.** Only attorneys at law, patent attorneys and notaries public as well as the authority under the Federal Ministry of Finance responsible for proceedings relating to state property are authorized to professionally represent parties before the Patent Office and before the Supreme Patent and Trademark Chamber.

#### **Prohibition of Unauthorized Representation**

**78.** (1) Anyone who, in matters relating to the protection of inventions, on a commercial scale

1. prepares written documents or drawings for use before Austrian or foreign authorities,
2. gives information,
3. represents parties before Austrian authorities, or
4. offers to conduct any of the activities referred to in no. 1 to 3,

without being authorized to professional representation in Austria, shall be guilty of unauthorized representation and shall be fined up to EUR 4 360 by the district administrative authority.

(2) Representation of a legal entity by employees of another legal entity, associated economically therewith, shall not be considered as unauthorized representation. Other legal personalities with the exception of natural persons shall be on par with the legal entities.

(3) The special provisions relating to the treatment of unauthorized representation at the ordinary courts shall not be affected.

### **Patent Gazette**

**79.** (1) The Patent Office shall periodically issue a Patent Gazette containing the publications provided for in this Federal Law and the orders issued by the President of the Patent Office. Unless expressly stated otherwise, these orders shall enter into force on the day following the issue of the Patent Gazette containing the respective announcement.

(2) The setting-up and publication of this Gazette shall be regulated by order of the President.

### **Patent Register, Patent Specifications**

**80.** (1) The Patent Office shall keep a Patent Register. It shall specify the number, title, filing date and, if any, priority of the granted patents, as well as the name and the domicile or residence of the patentees and their representatives. The beginning of patent protection, the expiration, the revocation, the declaration of forfeiture, of nullity, of lack of title, of dependence, the designation as inventor, the maintenance of an additional patent as an independent patent and the assignments of patents, liens and other rights in rem relating to patents, licenses, employer's rights to use the invention, the entitlement to prior use, the restoration of rights, declaratory decisions and entries relating to disputes as well as indications under section 156 (2) shall also be entered in the Patent Register.

(2) The descriptions and drawings pertaining to existing patents as well as the requests and documents upon which the entries in the register are based shall be kept by the Patent Office during the maintenance of the respective patent.

(3) Anyone may inspect the Patent Register.

(4) The Patent Office shall publish the descriptions, patent claims, drawings and abstracts of the granted patents, to the extent that they are open to public inspection, in separate printed documents (patent specifications). The patent specifications shall specify the references considered by the Patent Office by assessing the patentability of the invention for which an application has been filed.

(5) Institutions under public law shall, on request, get free of charge one copy of all patent specifications issued as from the time of receipt of the respective request provided these are made accessible to the public.

(6) On request, the Patent Office shall issue certified copies of the entries in the Register.

### **Inspection of Files**

**81.** (1) The parties involved in proceedings shall be entitled to inspect the files relating to the proceedings.

(2) Anyone may inspect the files relating to published patent applications and patents granted thereon.

(3) Third parties shall be entitled to inspect the files relating to unpublished patent applications only on approval by the applicant. The approval of the applicant shall not be required for any person against whom the applicant has cited his patent application. After publication of a divisional application, any person may inspect the files of the earlier application without the approval of the applicant.

(4) Files relating to searches and expert opinions under section 57a shall be open to inspection by third parties only on approval of the requesting party. No approval need be given against whom the requesting party has cited such search or such expert opinion.

(5) The right to inspect the files shall also comprise the right to make copies thereof. These shall be certified by the Patent Office on request.

(6) Information and official certificates as to when, under what title, by whom, and, if applicable, by which representative an application has been filed, the file number of the application, to which patent class it belongs, which priority has been claimed, the file number of the application on which priority is claimed, whether an independent patent or an additional patent is sought, the naming of the inventor, if any, whether the application is still pending as well as whether and to whom the right of it have been assigned shall be supplied to any person.

(7) Records of consultations and parts of files relating solely to the internal office procedure shall be excluded from inspection. In case of a trade or business secret or another reason worthy of being taken into consideration parts of files, the publication of which is not necessary for the public's information, may also be exempted from inspection on request.

### **Samples of Deposited Biological Material**

**81a.** (1) Before the date of publication of the application anybody who has the right of inspection of files according to section 81 (3) shall be entitled to get a sample of a biological material deposited under section 87a (2) 1. From the date of publication of the application anybody who makes a respective request shall have this right. Access shall be provided subject to subsection 2 and 3 through the supply of a sample of the deposited biological material to the requesting person or an independent expert.

(2) The sample shall be supplied only if the person requesting it undertakes, for the term during which the patent is in force or until the application is withdrawn or rejected,

1. not to make a sample of the deposited biological material or of any material derived from it available to third parties, and
2. not to use a sample of the deposited biological material or of any material derived from it except for experimental purposes,

unless the applicant or patentee expressly waives such an undertaking.

(3) Up to the date on which the technical preparations for publication of the application are terminated the applicant may request that

1. until the patent is granted, or
2. where the application is withdrawn or rejected, for twenty years from the date on which the application was filed,

access to a sample of the deposited biological material shall be limited to an independent expert.

(4) The following may be named as experts within the meaning of subsection 3:

1. any natural person, provided that the requesting person furnishes evidence that the nomination has the approval of the applicant,
2. any natural person recognized by the President of the Patent Office as expert and registered in the list of experts kept at the Patent Office.

The nomination shall be accompanied by a declaration from the expert vis-à-vis the applicant in which he enters into the undertaking under subsection 2.

### **Disciplinary Penalties and Penalties for Wanton Acts**

**82.** (1) The person who is in charge of an oral proceeding, a hearing, an inspection or the taking of evidence shall ensure that order be maintained and propriety be observed.

(2) Persons who disturb an official act or violate the rules of propriety by improper behavior shall be reprimanded. If the reprimand remains without effect, they may, upon previous warning, be refused to speak, or removed and ordered to appoint a representative, or be sentenced to a disciplinary penalty not exceeding EUR 726.

(3) The same disciplinary penalties may be imposed on persons who draw up their written submissions in an insulting manner.

(4) Measures under subsection 2 shall be taken by the person in charge of the official act. In proceedings before the Appeal or Nullity Department of the Patent Office or before the Supreme Patent and Trademark Chamber, during the proceeding the board shall decide on the removal of a person taking part in the proceeding or the imposition of a disciplinary penalty. Disciplinary penalties under subsection 3 shall be imposed by the board in proceedings where decisions are taken by a board.

(5) On public authorities and representatives authorized to act for parties on a professional basis who are subject to disciplinary regulations no disciplinary penalties shall be imposed, but the case shall be reported to the disciplinary authority concerned.

(6) The imposition of a disciplinary penalty shall not preclude criminal prosecution for the same act.

**83.** Persons who call up the activity of the Patent Office or the Supreme Patent and Trademark Chamber apparently by wantonness or make incorrect statements with the intention of delaying a case may be sentenced to a penalty for wanton acts not exceeding EUR 726. In proceedings where the decisions are taken by a board, the board shall decide on the penalty for wanton acts.

**84.** (1) The disciplinary penalties and penalties for wanton acts shall flow to the Federal Government. The provisions of the Law of Administrative Penalties 1991, Federal Law Gazette No. 52, concerning the execution of a sentence shall apply *mutatis mutandis*.

(2) Disciplinary penalties shall be imposed by the authority which is in charge of the disturbed official act or before which the propriety is violated by improper behavior or to which written submissions (section 82 (3)) are addressed. The power to impose penalties for wanton acts shall lie with the authority whose activity has been called up by wantonness or before which incorrect statements have been made with the intention of delaying a case.

(3) A decision of the Technical Department or the Legal Department or the Nullity Department imposing a disciplinary penalty or penalty for wanton acts may be appealed against at the next higher instance (section 70). The appeal shall be made within two weeks and shall have no suspensive effect. No ordinary appeal shall be admitted against the decision of the appeal instance.

#### **Service of Documents**

**85.** The documents drawn up by the Patent Office and the Supreme Patent and Trademark Chamber shall be served in accordance with the Service Law, Federal Law Gazette No. 200/1982, unless otherwise provided in section 86.

**86.** Where a submission has been made by several persons jointly not all of whom do reside in Austria, in case of doubt the firstly named person residing in Austria shall be regarded as authorized recipient on behalf of all parties.

### **III. PROCEDURE**

#### **A. Grant of Patents**

##### **Filing of a Patent Application**

**87.** (1) An application for a patent shall be filed at the Patent Office in written form.

(2) The day on which the application is received at the Patent Office shall be regarded as the day of filing.

##### **Disclosure**

**87a.** (1) The patent application shall disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

(2) If an invention involves the use of or concerns biological material which is not available to the public and which cannot be described in the application in such a manner as to enable the invention to be carried out by a person skilled in the art, the invention shall be regarded as disclosed under subsection 1 only, if

1. the biological material has been deposited with a recognized depositary institution as defined by the Budapest Treaty not later than on the day of filing,
2. the application as filed contains such relevant information as is available to the applicant on the characteristics of the biological material deposited, and
3. the name of the depositary institution and the accession number of the deposit have been stated in the application.

(3) The information referred to in subsection 2 no. 3 may be submitted

1. within sixteen months after the day of filing or, if a priority has been claimed, after the priority date, or
2. up to the day of submission of a request for an earlier publication of the application, or
3. within one month after the Patent Office has informed the applicant that the right to inspect the files under section 81 (3) exists,

whereas the ruling period shall be the one which is the first to expire.

##### **Unity**

**88.** The application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.



### **Requirements of the Application**

**89.** (1) The application shall contain:

1. the name and domicile or place of residence of the applicant and his representative, if any;
2. the request for the grant of a patent;
3. an appropriate, brief designation of the invention to be patented (title);
4. a description of the invention;
5. one or several patent claims (section 91 (1));
6. any drawings necessary to understand the invention;
7. an abstract (section 91 (2)).

(2) The parts of the application cited in subsection 1 no. 4 to 7 shall be submitted in duplicate. They may be drawn up also in English or French.

**89a.** The industrial application of a sequence or partial sequence of a gene must be disclosed in the application.

**90.** *(Cancelled; Federal Law Gazette I 2004/149)*

**91.** (1) The patent claims shall, in a clear and distinguishing manner, define the matter for which protection is sought. They shall be supported by the description.

(2) The abstract shall contain a concise summary of the disclosure contained in the application. It shall merely serve as a technical information and shall not be used for any other purpose, in particular not for determining the scope of protection.

(3) The description, the patent claims, the drawings and the abstract may be amended until the decision of grant is passed (section 101c (1)). To the extent that these amendments affect the substance of the invention, they shall be separated from the application and, if the applicant wishes to obtain protection for them as well, shall be filed in divisional applications (section 99 (5)).

**91a.** If parts of the application are in English or French (section 89 (2)), the applicant shall be requested in the context of the examination of conformity with the law to submit a translation into German within the time limit set by section 99 (2). The translation shall be the basis for the application proceeding; its correctness shall not be examined in the application proceeding.

**92.** Form and contents of an application shall be regulated in detail by order of the President of the Patent Office. In doing so, consideration shall be paid to a maximum of expediency and simplicity as well as to the comprehensibility of the patent specification and to the requirements of printing and publication thereof.

### **Division of the Application**

**92a.** The applicant or the patentee of a granted patent or the respective legal successor may during the entire application proceeding as well as up to the expiration of a time limit

1. of two months after the entry into force of the decision rejecting the patent application, or
2. of six months after the announcement of the grant of the patent under section 101c (2), if no opposition has been filed, or
3. of two months after the entry into force of the decision on an opposition raised in time

file a separate application (divisional application). The day of filing of the divisional application shall be the day on which the original application was filed at the Patent Office, if the applicant claims this day as day of filing in the divisional application and the divisional application does not go beyond the contents of the earlier application in the originally filed version.

### **Conversion of the Application**

**92b.** The applicant may request the conversion of the application into a utility model application as defined by the Utility Models Law until the decision of grant (section 101c (1)) or the decision on rejection (section 100) is passed. The day of filing of that utility model application shall be the day of filing of the patent application at the Patent Office. The conversion of a patent application shall not be admissible if the application concerned is a converted utility model application under section 21 of the Utility Models Law.

### **Priority**

**93.** (1) The applicant shall have the right of priority to his invention from the day on which his application for a patent was duly filed.

(2) From this day he shall have priority over any application of the same invention filed at a later date.

(3) If the application contains deficiencies and the deficiencies are eliminated in time (section 99), this elimination takes effect as of the day of the first filing provided that the subject matter of the invention is not affected by such amendments.

**93a.** Within a period of twelve months after the day of filing of an earlier patent or utility model application filed at the Patent Office, the applicant shall be entitled to the right of priority of the earlier patent or utility model application for a later filed patent application concerning the same invention (inner priority). The requirements and the effects of this right of priority shall correspond to those of Article 4 of the Paris Convention for the Protection of Industrial Property, Federal Law Gazette No. 399/1973.

**93b.** Within a time period of twelve months after the day of filing of an earlier patent or utility model application filed at an filing office not coming under the scope of an intergovernmental agreement on the recognition of priority, the applicant shall be entitled to the priority of the earlier patent or utility model application for a later filed patent application concerning the same invention in Austria, if a corresponding reciprocity with this filing office to be published by announcement of the Federal Minister for Transport, Innovation and Technology in the Federal Law Gazette exists. The requirements and the effects of this right of priority right shall correspond to those of Article 4 of the Paris Convention for the Protection of Industrial Property, Federal Law Gazette No. 399/1973.

**94.** Separate priorities for individual parts of the subject matter of the application (partial priorities) shall be claimed only on the basis of sections 93a or 93b or on the basis of intergovernmental agreements. Such partial priorities shall also be admissible, if the day of receipt of the application at the Patent Office remains decisive for the priority of a feature of the subject matter of the application. Several priorities may be claimed for one patent claim.

**95.** (1) The rights of priority granted on the basis of sections 93a or 93b or on the basis of intergovernmental agreements shall be expressly claimed. The day of filing of the application, the priority of which is claimed, and the country, in which that application has been made, shall be indicated (declaration of priority). Furthermore the number of that application shall be specified.

(2) The declaration of priority shall be submitted not later than two months after the receipt of the patent application at the Patent Office. Within this time limit, correction of the declaration of priority may be requested.

(3) If the grant or maintenance of the protected right depends on whether the right of priority has been lawfully claimed, the right of priority must be proved. It shall be governed by order of the President of the Patent Office what documents in the proceedings before the Patent Office and the Supreme Patent and Trademark Chamber are required for this proof (priority documents) and at what time they are to be submitted.

(4) If the declaration of priority is not submitted in time, if the priority documents are not lodged in time, or if the number of the application, the priority of which has been claimed, is not notified upon official request within the time limit set, the day of filing of the application in Austria shall count as the priority date.

### **Examination of Conformity with the Law**

**99.** (1) Every application shall be subject to an examination of conformity with the law made by the Patent Office by the Technical Department, wherein, however, an examination on whether the applicant is entitled to the grant of the patent shall not take place. The financial profitability of the invention shall not be assessed.

(2) If the application does not comply with the formal requirements prescribed, the applicant shall be requested to eliminate any deficiencies within a time limit set.

(3) If the examination, if necessary after the hearing of experts, reveals that the invention is not patentable, the applicant shall be notified accordingly, if necessary after having been heard by the examiner, on the reasons with the instruction to respond within the time limit set.

(4) If the examination reveals that the application lacks unity (section 88), the applicant shall be requested to establish unity within the time limit set. Upon request of the applicant in this case, it shall be determined by way of decision that the application lacks unity. With the entry into force of such a decision, the applicant shall be set a new time limit to establish unity.

(5) If the application has been amended in an inadmissible way (section 91 (3)), the applicant shall be requested to divide out the inadmissible amendments within a time limit set. Within the period referred to in section 92a a divisional application may be filed for the part to be divided out, which shall be assigned as the day of filing the day on which the Patent Office has received the amendments in the proceeding of the original application.

(6) Upon request, the time limits provided under subsection 2 to 5 may be extended. The President of the Patent Office may issue guidelines on the principles of examination as well as on the procedure to be followed thereby by the Technical Department. In particular, he may determine the extent of the time limits to be set by the Office. In doing so, it shall be taken into account, that the examination is as efficient and accurate as possible and that the treatment of the applications shall be made in consistency by the Technical Department.

### **Rejection of the Application**

**100.** (1) If the examination under section 99 reveals the inadmissibility of the grant of the patent, the application shall be rejected. If the conditions apply only partially, only the respective part of the application shall be rejected.

(2) In any case the application shall be rejected in whole, if one of the time limits set pursuant to section 99 elapses without use and no comment is received until the decision on rejection is made.

### **Publication of the Application**

**101.** (1) Subject to section 101a the application shall be published immediately after the expiry of a period of eighteen months from the day of filing, if priority has been claimed, from the priority date. Upon request of the applicant it shall, however, be published before the expiry of that period.

(2) The publication of the application shall contain the description, the patent claims, the drawings and the abstract as filed and, in an annex, the search report, where it is available before the termination of the technical preparations for publication. The search report shall mention those documents, investigated by the Patent Office at the time of drawing up the report, which may be taken into consideration for the assessment of patentability. The search report shall be based on the patent claims in the version as originally filed, with section 22a (1) sentence 2 and 3 to be applied *mutatis mutandis*. If the search report has not been published at the same time as the application, it shall be published separately.

(3) If, before the termination of the technical preparations for publication of the application, the patent claims have been amended, the most recently filed patent claims shall also be included in the publication.

(4) The publication of the application shall be mentioned in the Patent Gazette by indicating the name and domicile or residence of the applicant, an appropriate, brief designation of the subject matter of the invention (title) and the day of filing (announcement of the application).

(5) From the date of the announcement of the application in the Patent Gazette (subsection 4) the application entitles the applicant to a provisional claim for an adequate compensation against anyone who used the subject matter of the application without authorization. Section 154 shall apply *mutatis mutandis* with the proviso that such a claim shall not become statute-barred before the expiration of one year after the announcement of the grant (section 101c (2)).

**101a.** (1) If the decision granting the patent enters into force before the expiry of the period referred to in section 101 (1), the application shall be published at the same time as the patent specification (section 80 (4)). In this case the search report shall not be published.

(2) The application shall not be published if it has been withdrawn or rejected before the termination of the technical preparations for publication. If the decision on rejection does not enter into force, the application shall be published even after the expiration of the period referred to in section 101 (1).

(3) If a utility model application under section 21 of the Utility Model Law is converted to a patent application, and if publication cannot take place within the period referred to in section 101 (1), the application shall be published even after the expiration of that period.

(4) If a divisional application cannot be published within the period referred to in section 101 (1), the application shall be published even after the expiration of that period.

#### **Observations by Third Parties**

**101b.** (1) Following publication of the application any third party may present observations concerning the patentability of the filed invention. The observations shall state the grounds on which they are based. Third parties shall not be party to the proceedings before the Patent Office and shall not be entitled to be compensated for costs incurred.

(2) Any such observations shall be communicated to the applicant, who may comment on them.

#### **Grant of a Patent**

**101c.** (1) If no objections against the grant exist and if the publication fee for the patent specification has been paid, the Technical Department shall decide to grant the patent.

(2) The grant of the patent shall be announced in the Patent Gazette. At the same time the patent specification shall be published (section 80 (4)), the patent shall be entered in the Patent Register and the letters patent shall be issued for the patentee. With the announcement in the Patent Gazette the legal effects of the patent shall enter into force.

#### **Announcement of Withdrawal or Rejection of the Application**

**101d.** (1) If the application is withdrawn after publication or if the patent application is rejected, this shall also be announced in the Patent Gazette.

(2) Upon announcement of the withdrawal or the rejection of the application the effects of the provisional protection (section 101 (5)) shall be considered as not having come into existence.

#### **Opposition**

**102.** (1) An opposition may be lodged against the grant of a patent within four months from the announcement of the grant of the patent (section 101c (2)). The opposition shall have to be received at the Patent Office not later than on the last day of that time limit.

(2) The opposition shall be submitted in writing and in duplicate. It shall be based on the following grounds supported by definite facts:

1. that the subject matter of the patent is not in compliance with sections 1 to 3;
2. that the patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;
3. that the subject matter of the patent extends beyond the contents of the application in the version as originally filed determining the day of filing;
4. that the biological material deposited according to section 87a (2) 1 has not been permanently available either at the original depositary institution as defined by the Budapest Treaty or at another depositary institution to which it has been passed on under this Treaty, unless the patentee proves
  - a) that he deposited the biological material again and that the new deposit is deemed, under Article 4 of that Treaty, to have been made on the day of the original deposit, or
  - b) that he was prevented from making a new deposit by an unforeseeable or unavoidable event and that he made such a deposit within two months after the impediment had ceased to exist.

(3) A copy of the opposition shall be served on the patentee enabling him to submit a written comment within a time limit of two months, which may be extended on reasonable grounds.

#### **Opposition Proceedings**

**103.** (1) As soon as the comment has been submitted, or the time limit for its submission has expired, the referee in charge of the respective case shall make the instructions in respect of any further correspondence being necessary, the hearing of the parties concerned, the fetching of the pieces of evidence offered by the parties, the taking of evidence and, in general, with the purpose of a clearing up as reliable as possible of the true facts.

(2) The chairperson may order an oral proceeding on request or ex officio, if he considers this to be necessary in the individual case to decide on the opposition. The oral proceeding shall be in public. Section 119 (2) shall apply.

(3) The chairperson shall open the oral proceeding and convince himself of the identities of all persons appearing and shall verify their positions as parties and any powers of attorney. He shall conduct the oral proceeding without permitting digression or lengthiness in a manner so as to guarantee the parties' right to be heard.

(4) The chairperson shall determine the order in which the parties are to be heard, the evidence is to be taken and the results of previously taken evidence or investigations are to be submitted and discussed. The chairperson or any members of the board appointed by him shall discuss the matter with the parties as to facts and law

(5) A record of the oral proceeding shall be taken. Section 73 (4) shall apply *mutatis mutandis*.

(6) The Fee Entitlement Law 1975 shall apply.

#### **Evaluation of Evidence and Decision**

**104.** (1) The Technical Department shall make its decisions by independently evaluating the facts and evidence submitted.

(2) Consultation and voting of the Technical Department shall be effected in camera. Discontinuance in proceedings shall be decided upon in writing by circular unless a member opposes. Section 117 first sentence shall apply *mutatis mutandis*.

(3) The referee shall draft the decision on the basis of the resolutions adopted. If he is in the minority with his view, he shall redraft the text of the decision in agreement with the member on whose petition the decision was based. The chairperson shall, however, be free to charge another member of the board with the preparation of the draft or parts thereof.

(4) The patent shall be revoked if the opposition is justified. If the opposition is partially justified, only the respective part of the patent shall be revoked. In all other cases the opposition shall be rejected.

#### **Costs**

**105.** Each party to the opposition proceedings shall bear the costs it has incurred.

**106.** (*Cancelled; Federal Law Gazette I 2004/149*)

#### **Announcement of the Decision on the Opposition**

**107.** The complete or partial revocation of a patent shall be published in the Patent Gazette. If the patent is revoked only in part, the Patent Office shall publish the amendments.

#### **Effects of Revocation**

**108.** The application and the patent shall be deemed to be void ab initio to the extent to which the patent has legally binding been revoked.

**109.** (*Cancelled; Federal Law Gazette I 2004/149*)

**110.** (*Cancelled*)

**111.** (*Cancelled; Federal Law Gazette I 2004/149*)

### **B. Searches and Opinions**

#### **Requirements and Treatment of Requests**

**111a.** (1) A Request for a search under section 57a (1) shall relate to a single concrete technical problem. In the request it may be asked that the search shall be based on an earlier day. The petition shall be accompanied by a precise and clear description and, if necessary, a concise abstract of the concrete technical problem and drawings.

(2) A request for an expert opinion under section 57a (2) shall be accompanied by a description of the invention, claims and, where necessary, drawings. Section 91 (1) shall apply *mutatis mutandis*. If the requesting party does not indicate the state of the art on which the expert opinion is to be based, the expert opinion shall be based on the state of the art known to the Patent Office on the day of receipt of the request. In the request it may be asked that the expert opinion shall be based on an earlier day.

(3) Requests for searches and an expert opinion under Section 57a with enclosures (subsection 1 and 2) shall be submitted in writing in duplicate. The description, the claims and the abstract may also be drawn up in English or in French, in which case the Patent Office shall be entitled to demand a translation into German.

(4) The technically qualified member competent according to the allocation of duties (section 61) shall decide on the request. A copy of the enclosures submitted by the requesting party (subsection 1 and 2) shall accompany the decision.

(5) In case of any deficiency of the request or of an enclosure, the requesting party shall be requested to eliminate this deficiency within a time limit set. If the deficiency is not eliminated, the request shall be rejected by decision. The decision may be appealed against.

### **C. Contesting of Patents**

#### **Filing of a Request**

**112.** (1) Proceedings for a declaration of forfeiture, of nullity or of lack of title of patents shall be instituted only on request. However, the Patent Office shall be entitled to continue ex officio proceedings for a declaration of forfeiture or nullity instituted on request in case such request is withdrawn.

(2) The requesting party who does not have any residence in a state, in which the decision ordering the requesting party to reimburse the costs would be enforced, shall provide security for the costs of proceedings to the opposing party on petition of the latter. The petition shall be made within 14 days from service of the request, otherwise such title to security shall lapse.

(3) The Patent Office shall determine, at its discretion, the amount of the security. A time limit shall be set to the requesting party to pay the security. If the security is not paid in time, the request shall be considered withdrawn.

#### **Immediate Rejection**

**113.** (1) Requests for a declaration of forfeiture, of nullity, or of lack of title of a patent that apparently are not based on legal grounds as well as submissions that do not contain any specific request or to whose submission the requesting party is not entitled (sections 49 and 50), shall be rejected, without further proceedings, by the Nullity Department by stating the reasons.

(2) Likewise, requests shall, without further proceedings, be rejected for lack of competence of the Nullity Department, for decided cases or for pending disputes by stating the reasons.

(3) Such decisions shall be considered as final decisions.

#### **Form and Contents of the Request**

**114.** (1) The request shall contain a brief presentation of the case in dispute, and, in addition to the specific request, an indication of the pieces of evidence to be furnished.

(2) The request and its enclosures shall be filed at the Patent Office in duplicate if directed against a single patentee only.

(3) If the request is directed against several patentees, the submission to the Patent Office shall be accompanied by a copy of the request and its enclosures for each opposing party.

#### **Third-party Intervention**

**114a.** (1) Anyone having a legal interest in a party being successful in proceedings pending before the Nullity Department or the Supreme Patent and Trademark Chamber may join this party in the proceedings (third-party intervention). The intervening third party shall have the status of a co-litigant (section 14 Code of Civil Procedure), even if the conditions of section 20 Code of Civil Procedure do not apply.

(2) In all other respects sections 18 to 20 Code of Civil Procedure shall apply *mutatis mutandis*.

#### **Proceedings on Requests of Contestation**

**115.** (1) The chairperson shall appoint a technically qualified member and legally qualified member as referees.

(2) The legally qualified referee shall, if the request has been considered admissible to institute the proceedings, send a copy of the request with its enclosures to the opposing party requesting the latter to

submit his counterstatement in writing and in duplicate within a time limit of at least two months, which time limit shall be extended by the referee on reasonable grounds.

#### **Suspension because of Opposition Proceedings**

**115a.** Pending proceedings for a declaration of nullity of a patent shall be suspended ex officio, if opposition proceedings are pending or instituted. The suspended proceedings shall be continued on request or ex officio following the legally binding termination of the opposition proceedings, if the patent has not been revoked. If the patent has been revoked, the proceedings shall be discontinued ex officio.

#### **Preliminary Proceedings**

**116.** (1) After submission of the counterstatement or after lapse of the time limit set therefor, the legally qualified referee shall, if necessary, carry out preliminary proceedings (subsection 2 and 3) in preparation of the oral proceeding. The referees shall seek agreement in the preliminary proceedings. In case of disagreement the chairperson shall decide.

(2) In the preliminary proceedings all of the material for the oral proceeding shall be prepared to such an extent that it may, if possible, be carried out without interruption. In particular, the parties shall be heard or their statements shall be obtained as to which of the alleged facts are not contested unless this is apparent from the written submissions.

(3) The preliminary proceedings shall also include the taking of evidence, such as inspection, the hearing of non-local witnesses and time-consuming investigations by experts, if the taking of such evidence within the oral proceeding considerably complicated or delayed the latter or incurred disproportionately high costs or if the immediate taking of evidence were necessary for securing the evidence.

(4) Whenever evidence is taken in the preliminary proceedings, the parties shall be summoned. Their default shall not prevent the taking of evidence.

(5) For the taking of evidence in the preliminary proceedings, section 120 shall apply. Evidence by hearing the parties shall not be admitted in the preliminary proceedings.

(6) In the preliminary proceedings, the legally qualified referee shall have all the powers and duties of a chairperson provided for in sections 180 to 185 Code of Civil Procedure.

(7) The chairperson may order the supplementing of the preliminary proceedings in respect to certain facts to be clearly specified.

(8) After receipt of the counterstatement or after lapse of the time limit set therefor as well as, if necessary, after having carried out preliminary proceedings, the referee shall submit to the chairman the files including a written statement of the facts and of all questions of fact and legal questions of relevance to the decision with a statement of his opinion (report). The legally qualified referee shall report on the legal questions and the technically qualified referee on the technical questions. The chairperson may ask a referee or any other voting member to supplement the report.

#### **Discontinuance of Proceedings without Oral Proceeding**

**117.** If a patent expires during the proceedings before the Nullity Department, the proceedings shall be discontinued by decision unless the requesting party insists on their being carried out by substantiating a legal interest. In cases provided for in section 46 (1) 2 and 3, the requesting party shall, in principle, be entitled to reimbursement of costs, the opposing party only if he did not cause the request to be filed due to his conduct and the patent lapsed during the time limit set for submitting a counterstatement. The decision on the discontinuance of proceedings shall also settle the question of reimbursement of costs (section 122 (1)). This decision shall be regarded as final decision.

#### **Summons to Oral Proceedings**

**118.** (1) The chairperson shall summon to the oral proceeding. The requesting party shall receive the counterstatement not later than the summon to the oral proceeding.

(2) The oral proceeding may, for important reasons, be postponed to any other date by the chairman either on request or ex officio.

(3) The parties or their representatives as well as the witnesses and experts to be heard at the oral proceeding shall be summoned to the oral proceeding.

(4) Default of the parties or their representatives shall neither prevent the oral proceeding from being carried out nor the decision from being taken.

(5) If adjournment is requested at an oral proceeding, the board shall decide upon.

#### **Oral Proceeding**

**119.** (1) The oral proceeding shall be conducted and carried out in accordance with the provisions under sections 171 to 203 Code of Civil Procedure to be applied *mutatis mutandis*. Section 73 (3) last sentence shall apply.

(2) In addition to the cases set out in section 172 Code of Civil Procedure the public may be excluded on request for a part or all of the oral proceeding, if an important interest of the Federation or a trade or business secret of one of the parties or of one of the witnesses would be endangered by the oral proceeding being held in public.

(3) Notwithstanding the exclusion of the public, the members of the Patent Office and of the Supreme Patent and Trademark Chamber as well as the employees in public service of higher service of the Federal Ministry for Transport, Innovation and Technology shall have access to the oral proceeding.

#### **Evidence and the Taking of Evidence**

**120.** (1) Unless otherwise provided by this Law, the taking of evidence shall be carried out by applying the provisions of sections 266 to 383 Code of Civil Procedure *mutatis mutandis*.

(2) The evidence given by the witnesses before the Patent Office as well as the sworn statements of the parties before the Patent Office shall be equivalent to a testimony before court.

(3) The preceding principles in respect of the taking of evidence shall apply both to the preliminary proceedings and to the oral proceeding.

(4) The Fee Entitlement Law 1975 shall apply.

(5) The disciplinary penalties and penalties for wanton acts imposed pursuant to sections 313, 326, 333 and 354 Code of Civil Procedure shall not exceed EUR 726. While evidence is taken during an oral proceeding, disciplinary penalties and penalties for wanton acts shall be imposed by the board, during the preliminary proceedings, they shall be imposed by the legally qualified referee (section 116 (1)). Section 84 (1) and (3) shall apply.

#### **Consultation and Voting**

**121.** Consultation and Voting of the Nullity Department shall be effected in camera. Discontinuance in proceedings may be decided upon in writing by circular unless a member opposes.

#### **Costs of the Proceedings**

**122.** (1) The reimbursement of the costs of the proceedings and representation shall, subject to subsection 2 and section 117, be decided upon by applying, *mutatis mutandis*, sections 40 to 55 Code of Civil Procedure.

(2) The party who withdraws the request has to reimburse the costs to the opposing party.

#### **Contents of the Decision**

**123.** The document setting forth the decision shall contain:

1. the designation of the department and the names of the members who took part in the decision;
2. the names of the parties, their representatives and authorized persons as well as their positions as parties;
3. the decision;
4. the facts of the case underlying the decision, comprising a concise description of the facts resulting from the oral proceeding pointing out the petitions lodged by the parties in respect of the main issue;
5. the reasons for the decision;
6. the instructions on rights of appeal.

#### **Pronouncement of the Decision**

**124.** (1) The pronouncement of the decision including the essential reasons for the decision shall be effected, if possible, orally immediately upon closure of the oral proceeding.



(2) In all cases, however, the written decision including all the reasons for the decision shall be served on the parties as soon as possible.

#### **Recording**

**125.** (1) A record shall be taken of all the evidence taken in the preliminary proceedings and in the oral proceeding. The record shall be signed by the chairperson or, in the preliminary proceedings, by the referee taking the evidence. In all other respects section 73 (4) shall apply *mutatis mutandis*.

(2) Of the sitting in camera (section 121), a separate record shall be taken, showing the results of the consultation and the voting. Such record shall be signed by the chairperson and the clerk.

#### **Assistance of the Courts**

**126.** The courts shall provide their assistance to the Patent Office and the Supreme Patent and Trademark Chamber.

#### **Reopening of the Proceedings**

**127.** (1) If a patent has been wholly or partially revoked, if a declaration of forfeiture, of nullity or of lack of title has been made, or if a request aiming at such a decision has been rejected wholly or partially, the closed proceedings shall be reopened upon request by a party in the following cases:

1. if a document on which the decision is based has been falsified or forged;
2. if a witness or an expert has made a false statement or the opposing party has perjured during the hearing and the decision is based thereon;
3. if the decision has been obtained through a fraudulent act liable to criminal prosecution by the representative of the party, or the opposing party or its representative;
4. if a member who has taken part in the decision or in an earlier decision underlying the decision has, to the party's detriment, committed an abuse of office liable to criminal prosecution;
5. if a criminal verdict, on which the decision is based, has been repealed by another legally effective verdict.

(2) The request for reopening shall, however, be admissible to the parties only within one year after the decision to be annulled has become legally binding and irrespective of the rights of third parties acquired in the meantime.

(3) In particular, persons who have in the meantime used the invention or have taken measures necessary for such use shall acquire the right to which a prior user of the invention is entitled (section 23).

(4) The request for reopening shall be decided by the authority (Technical Department, Appeal or Nullity Department of the Patent Office or Supreme Patent and Trademark Chamber) that passed the contested decision. If the request for reopening is granted by the Supreme Patent and Trademark Chamber, the latter shall also decide whether the reopened proceedings shall take place before it or before a lower instance.

(5) The request for reopening shall have no impeding effect on the execution of the decision.

**128.** If the deletion of a patent has been entered in the Patent Register by the Patent Office by error, the Patent Office shall, after having become aware of the error, order and publish the cancellation of this entry. Rights of third parties acquired in good faith in the meantime shall be preserved as in the case of reopening of the proceedings.

#### **Further Processing of the Application**

**128a.** If an application has been rejected due to the missing of a time limit set by the Patent Office, the applicant or his legal successor shall be entitled to request the processing of the application. The request shall be filed with the Patent Office within two months after the decision on rejection has been served. The action omitted shall be taken within that time limit. The request shall be granted only if the fee for further processing is paid. With granting the request for further processing the decision on rejection shall become ineffective.

#### **Restoration of Rights**

**129.** (1) Any person who, due to an unforeseeable or unavoidable event, was unable to observe a time limit set, the non-observance of which results, due to a provision relating to the protection of inventions, in the loss of rights as a direct consequence, shall be entitled to the restoration of rights. A failure based on minor errors shall not impede the restoration of rights.

(2) Restoration of rights shall not be granted,

1. if the time limit set for a request for restoration of rights (section 131 (1)) and the time limit set to file an appeal against the decision on such a request have not been observed;
2. if the time limit set for opposition (section 102 (1)) and the time limit set for the opponent's appeal (section 71 (1), section 145a (2)) have not been observed.

(3) With regard to the time limit set for the submission of a priority declaration, for the correction of it or for the filing of priority documents (section 95 (2) and (3)), the restoration of rights shall be admissible only if the request, irrespective of the time limits set for the filing of the request pursuant to section 131, has been received by the Patent Office not later than the day before the announcement of the grant of the patent (section 101c (2)). With the granting of the restoration of rights, any decision on grant (section 101) or on rejection (section 100) already issued, shall become ineffective.

**130.** (1) The request shall be decided upon by that department before which the omitted action was to be taken. If an action was omitted before a Technical Department, the legally qualified member assigned to that department shall decide on the request.

(2) In matters within the competence of the Nullity Department of the Patent Office any decision shall be taken by the chairperson. This decision may be appealed against at the Supreme Patent and Trademark Chamber in accordance with the provisions governing such legal remedy. In addition, concerning all matters within the responsibility of the Patent Office, all other provisions in force shall apply in respect of the decision making and contesting of decisions.

**131.** (1) The request for restoration shall be submitted within two months from the day on which the impediment ceased to exist, but in any case not later than twelve months after the day of expiration of the time limit concerned.

(2) The requesting party shall indicate the circumstances constituting the grounds of the request and substantiate them unless they are well known to the authority. The action omitted shall be taken at the same time the request is filed.

(3) The submission to the Patent Office shall be accompanied by a copy of the request and its enclosures for any opposing party

**132.** *(Cancelled; Federal Law Gazette I 2004/149)*

**133.** (1) If the request or the belated action is deficient, the requesting party shall be requested to eliminate the deficiencies within a time limit set before a decision is taken.

(2) If the property right has been entered in a public register, the request and the decision on it shall be entered in the Register.

(3) The grant of the restoration shall be announced in the Patent Gazette if a property right is restored by the grant of restoration the lapse of which is officially announced.

**134.** (1) Prior to passing a decision, any opposing party involved in the case shall be given the opportunity to make a comment within a time limit set (Section 131 (3)).

(2) Irrespective of whether the request is granted or not the requesting party shall be charged with the costs incurred to the opposing party in respect of the proceedings relating to the request and to the representation in the proceedings.

**135.** By granting the restoration of rights the legal consequences resulting from the nonobservance of the time limit shall cease to have effect. The authority shall take any measures appropriate for the execution of the decision.

**136.** (1) If a property right has been refused, lapsed, expired or otherwise become ineffective and is restored by grant of restoration, it shall not enter into effect against any person, who after the lapse of the property right and before the day of the official announcement of the grant of restoration (section 133 (3)) or, in case of section 133 (2), not later than on the day of entry of the request in the Register, and in all other cases not later than on the day of the receipt of the request at the competent authority, started to use the subject matter or took measures necessary for such use (interim user). Such person shall be entitled to exploit the subject matter for the requirements of his own business in his own workshops or in those of others. This entitlement may be inherited or sold only in conjunction with the business. Additionally, the provisions governing the prior user shall apply.

(2) If a license contract made during the earlier period of validity of a property right which has been restored exists, and if the licensee's right is restricted by an interim user (subsection 1), the licensee shall be entitled to request an appropriate reduction of the royalties stipulated or to terminate the contract if, owing to the above restriction, he is no longer interested in the continuation of the latter.

#### **Execution**

**137.** (1) Legally binding decisions of the Patent Office and of the Supreme Patent and Trademark Chamber shall entitle to execution according to section 1 of the Regulation on Execution.

(2) The Patent Office shall ex officio make the necessary entries and deletions in its registers to execute its own legally binding decisions and those of the Supreme Patent and Trademark Chamber. In case of decisions of a board of the Patent Office, the respective chairperson, in case of decisions of the Supreme Patent and Trademark Chamber, the respective chairperson of the Appeal or Nullity Department shall make the necessary instructions.

#### **Appeals**

**138.** (1) Any party considering itself wronged by a final decision of the Nullity Department of the Patent Office shall have the right of appeal to the Supreme Patent and Trademark Chamber. The appeal shall have suspensive effect.

(2) With the exception of decisions of suspension, there shall be no separate legal remedy against the decisions of the Nullity Department passed in the course of the preliminary proceedings or of the oral proceeding. Such decisions shall be contestable by appeal to the Supreme Patent and Trademark Chamber only if they had an influence on the final decision (section 70).

(3) The appeal shall be filed in writing with the Patent Office within two months from the date when the decision was served. It shall contain a substantiated petition for appeal.

(4) The appeal and its enclosures shall be filed with the Patent Office in duplicate. If the appeal is directed against several opposing parties, the submission to the Supreme Patent and Trademark Chamber shall be accompanied by a copy of the appeal and its enclosures for each opposing party.

**139.** (1) The Nullity Department shall be responsible for all matters falling within the competence of the Patent Office concerning appeals to the Supreme Patent and Trademark Chamber. It shall decide in camera. These decisions shall be regarded as final.

(2) If an appeal lodged in time has deficiencies, the legally qualified referee of the Nullity Department shall set a time limit for elimination to the appellant. If the deficiencies are eliminated within the time limit set, the appeal shall be regarded as duly submitted.

(3) Belated appeals or appeals not corrected within the time limit set under subsection 2 shall be dismissed by the Nullity Department.

(4) In all other cases, the legally qualified referee shall send a copy of the appeal to the opposing party with the indication that it is entitled to file a counterstatement to the appeal within two months.

(5) After submission of the counterstatement or after lapse of the two-month time limit therefor, the files shall be submitted to the Supreme Patent and Trademark Chamber by the legally qualified referee.

#### **Proceedings before the Supreme Patent and Trademark Chamber**

**140.** (1) Unless otherwise provided hereunder, sections 113 to 127 and 129 to 136 shall apply *mutatis mutandis* to proceedings before the Supreme Patent and Trademark Chamber.

(2) The Supreme Patent and Trademark Chamber shall not take new evidence.

(3) If the Supreme Patent and Trademark Chamber establishes an infringement of procedural provisions by the Nullity Department preventing the passing of a lawful decision, or if it considers the taking of additional evidence necessary, it shall refer the case back to the Nullity Department.

**141.** If the appeal includes deficiencies which have not been objected to under section 139 (2), the referee shall set a time limit to the appellant to eliminate the same.

**142.** (1) The Supreme Patent and Trademark Chamber shall pass its decision without preliminary proceedings and without an oral proceeding,

1. if the deficiencies of the appeal have not been eliminated within the time limit set under section 141;

2. if the appellant is not entitled to lodge the appeal;
3. if the appeal should have been rejected by the Nullity Department (section 139 (3));
4. if the appeal is directed against decisions under sections 113 and 139 (3);
5. if the appeal is directed against a decision on a request for restoration of rights (section 130 (2));
6. if the appeal is directed only against the decision on the reimbursement of costs (section 122);
7. if the appeal is based exclusively on the claim that the passing of a lawful decision was prevented by an infringement of the procedural provisions, or if the file shows that the referring back of the case to the Nullity Department on grounds of infringement of such procedural provisions appears necessary.

(2) If not a final decision on an appeal is to be passed, the decision may also be taken in writing without a sitting, if the chairperson regards a sitting as unnecessary because of the simplicity of the case. If, in this case, a member of the Supreme Patent and Trademark Chamber expresses an opinion deviating from the referee's request, a sitting shall be held anyway.

**143.** (1) If a party renounces an oral proceeding, if also the opposing party does not insist on such an oral proceeding within a time limit set by the referee, and if also the chairperson does not consider it necessary, the case shall be decided upon in camera.

(2) The oral proceeding, after calling of the case, shall commence with the reading of the referee's written report. This report shall contain a statement of the relevant facts, of the contents of the appeal and the counterstatement to the appeal, yet no expression of an opinion on the decision to be passed.

(3) Subsequently, the appellant and then the opposing party shall be heard; the latter shall have the right of the last word.

(4) The decision shall be passed only by those members of the board who took part in the oral proceeding on which the decision is to be based. If a change in the membership of the board occurs prior to passing a decision, the oral proceeding shall take place once more before the newly constituted board.

**144.** An appeal may be withdrawn until the end of the oral proceeding. If the appeal is withdrawn before the oral proceeding, the opposing party shall, if necessary be granted a time limit for asserting a claim for the reimbursement of costs. If no costs are claimed, the proceeding shall be discontinued by decision of the referee. In all other cases, decisions on the discontinuance of proceedings and on the claim for the reimbursement of costs shall be taken in camera.

**145.** (1) The Supreme Patent and Trademark Chamber shall decide on the verdict and on the reasons of the decision by absolute majority. The chairperson shall preside over the consultation and the voting. He shall participate in voting like any other member of the board. After the statement of the facts as well as of any requests by the referee and the possibly appointed co-referee, the chairperson shall call upon the voting members in the order in which they have asked for the floor and, after the conclusion of the consultation, shall proceed to the voting on the requests made. The chairperson shall determine the questions and the order in which they are put to vote. No member shall be allowed to refuse participation in the voting even if he was in the minority on a preliminary question. Each voting member may withdraw his vote until the end of the sitting.

(2) The result of the vote shall be recorded by the clerk and shall be signed by him and the chairperson. Each voting member shall have the right to write down the reasons for his opinion not having been incorporated in the decision and attach it to the voting record.

(3) The referee shall draft the decision to be issued on the basis of the resolutions adopted. If he is in the minority with his view, the chairperson shall, however, be free to charge other members of the board with the preparation of the draft or parts thereof. He shall verify whether the draft of the judgment is in conformity with the decision taken.

#### **Appeal to the Supreme Patent and Trademark Chamber against Decisions of the Appeal Department**

**145a.** (1) Any party considering itself wronged by a final decision of the Appeal Department shall have the right of appeal to the Supreme Patent and Trademark Chamber. Such appeal shall have suspensive effect.

(2) The appeal shall be filed with the Patent Office within two months from the date the decision of the Appeal Department was served. It shall contain a substantiated petition for appeal. If the appeal is directed against an opposing party, the appeal and its enclosures shall be filed in duplicate. If the appeal is directed

against several opposing parties, the submission to the Supreme Patent and Trademark Chamber shall be accompanied by a copy of the appeal and its enclosures for each opposing party.

(3) The Appeal Department shall be responsible for all matters falling within the competence of the Patent Office concerning appeals to the Supreme Patent and Trademark Chamber. It shall decide in camera. These decisions shall be regarded as final.

(4) If an appeal lodged in time has deficiencies, the referee of the Appeal Department shall set a time limit for correction to the appellant. If the deficiencies are eliminated within the time limit set, the appeal shall be regarded as duly submitted.

(5) Belated appeals or appeals not corrected within the time limit set under subsection 4 shall be dismissed by the Appeal Department. In all other cases, unless the appeal proceeding is to be carried out unilaterally, the referee shall send a copy of the appeal to the opposing party with the indication that he is entitled to file a counterstatement to the appeal within two months.

(6) After submission of the counterstatement or after lapse of the two-month time limit set therefor, the files shall be submitted to the Supreme Patent and Trademark Chamber.

#### **Proceedings before the Supreme Patent and Trademark Chamber in Case of Appeals**

**145b.** (1) Inadmissible appeals as well as appeals that should have already been dismissed by the Appeal Department shall be dismissed by the Supreme Patent and Trademark Chamber without any further proceedings. In the case of deficiencies, an appeal shall be dismissed only after the appellant has failed, on request, to eliminate the deficiencies. The referee shall set a time limit for correction to the appellant.

(2) The Supreme Patent and Trademark Chamber shall not take new evidence.

(3) The Supreme Patent and Trademark Chamber shall pass its decision on the appeal in camera without an oral proceeding. The Supreme Patent and Trademark Chamber may, however, if it considers this to be necessary in the individual case to decide on the appeal, order an oral proceeding on request or ex officio. The provisions governing the appeal proceedings before the Supreme Patent and Trademark Chamber shall apply to the oral proceeding *mutatis mutandis*.

(4) The Supreme Patent and Trademark Chamber shall decide on the merits. If, however, it detects an infringement of procedural provisions or if it considers supplementing or taking of evidence necessary, it shall refer the matter back to one of the lower instances.

(5) On issuing the decision the Supreme Patent and Trademark Chamber may limit the rendering of the parties' submissions and the facts constituting the basis for the decision to that what is necessary to understand its legal arguments. If the Supreme Patent and Trademark Chamber confirms the decision of the Appeal Department and considers its reasoning correct, it shall suffice to refer to its accuracy.

(6) Each party to the appeal proceedings shall bear the costs it has incurred.

(7) Unless stipulated otherwise in subsection 1 to 6 and section 145a, the provisions relating to an appeal shall also apply to the appeal.

### **IV. INFRINGEMENT OF PATENTS AND OBLIGATION TO PROVIDE INFORMATION**

#### **Claim for Injunction**

**147.** Anyone whose rights from a patent have been infringed or who worries about such an infringement may sue for injunction.

#### **Claim for Elimination**

**148.** (1) The patent infringer shall be obliged to eliminate the circumstances constituting the violation of the law.

(2) The injured party may demand in particular that the objects infringing the patent (infringing objects) be destroyed and the implements, machinery and other means (means of infringement) having served solely or mainly for the manufacture of the infringing objects be rendered unusable for the intended purposes at the expense of the infringer, insofar as rights in rem of third parties are not infringed thereby.

(3) If the infringing objects or infringing means referred to in subsection 2 contain parts of which the continued existence and use by the defendant do not infringe the plaintiff's right of exclusion, the court shall

specify those parts in the judgment ordering the objects or means to be destroyed or rendered unusable. In the execution of the judgment these parts shall, as far as possible, be excluded from being destroyed or rendered unusable if the liable party pays the costs associated therewith in advance.

(4) If it becomes apparent in the execution procedure that higher costs would be incurred by making the means of infringement unusable than by destroying the same, and if those costs are not paid in advance by the liable party, the court of execution shall, after having heard the parties, order the destruction of the means of infringement.

(5) If the circumstances constituting the violation of the law can be eliminated in a way different from the one referred to in subsection 2, which involves no or less destruction of assets, the infringed party shall be entitled only to such measures.

(6) Instead of demanding that the infringing objects be destroyed or that the means of infringement be rendered unusable, the infringed party may request that the infringing objects or means of infringement be surrendered by their owner in exchange for adequate compensation, not exceeding the costs of production.

(7) If necessary, an expert shall be consulted in executing destruction for specifying the objects being subject to execution.

#### **Publication of the Judgment**

**149.** (1) In a suit for injunction or elimination the court shall on request, if the successful party has a legitimate interest therein, grant to the latter the right to have the judgment published at the expense of the opposing party within a time limit to be set in accordance with section 409 (2) Code of Civil Procedure. The scope and type of publications shall be determined in the judgment.

(2) The publication shall comprise the verdict. On request of the successful party the court may, however, decide to publish a text that deviates from the verdict in extent or wording or supplements the same. Such request shall be filed not later than four weeks after the judgment has become legally binding. If the request has been made after the closure of the oral proceeding, the court of first instance shall decide on it upon entry into force of the judgment.

(3) The court of first instance shall, on request of the successful party, decide on the costs of the publication of the judgment and shall charge the opposing party with the reimbursement of the same.

#### **Monetary Claims**

**150.** (1) The party infringed by the unauthorized use of a patent shall be entitled to adequate compensation from the infringer.

(2) In cases of culpable patent infringement the infringed party may, instead of appropriate compensation (subsection 1), demand

a) damages including loss of profits, or

b) the surrender of the profits, which the infringer generated by infringing the patent.

(3) Irrespective of providing proof of any damage, the infringed party may demand double the compensation amount it is entitled to pursuant to subsection 1, if the patent infringement was caused by gross negligence or intent.

(4) The infringed party shall also have a claim to adequate compensation for disadvantages not consisting of damage in property which it suffered as a result of culpable patent infringement, provided this is justified by the specific circumstances of the case.

#### **Rendering of Accounts**

**151.** The infringer shall be liable to the infringed party to render accounts and to have their accuracy verified by an expert. Where such verification reveals a higher amount than that resulting from the accounts, the costs for verification shall be borne by the infringer.

#### **Information on the Origin and Distribution Networks**

**151a.** (1) Anyone who has suffered an infringement of one of the rights arising from his patent may demand information on the origin and distribution networks of the infringing goods and services, unless this would be disproportionate in comparison to the severity of the infringement and violate legal duties to maintain confidentiality; the infringer and the persons who were found to be commercially

1. in possession of infringing goods,
2. using the infringing services, or
3. providing services used in infringing activities,

shall be obligated to provide information.

(2) The obligation to provide information pursuant to subsection 1 above shall, if appropriate, comprise

1. the names and addresses of the producers, distributors, suppliers and the other previous holders of the goods or services as well as the intended wholesalers and retailers,
2. the quantities produced, delivered, received or ordered as well as the price obtained for the goods or services in question.

#### **Preliminary Injunctions**

**151b.** (1) With reference to rights to demand an injunction, elimination, adequate compensation, damages and surrender of the profits under this law, preliminary injunctions may be issued to safeguard the claim itself as well as to secure evidence.

(2) To safeguard claims for adequate compensation, damages and surrender of the profits, preliminary injunctions may be issued in the case of commercially committed infringements, if it is likely that the fulfillment of these claims is jeopardized.

(3) To safeguard the right to demand an injunction or elimination, preliminary injunctions may be issued even if the requirements referred to in section 381 Execution Order are not met.

(4) On request of the infringed party preliminary injunctions pursuant to subsection 1 shall be issued without hearing the opposing party if a delay would likely cause the infringed party to suffer irreparable damage or in case of danger that evidence would be destroyed.

#### **Employer's Liability**

**152.** (1) The proprietor of an enterprise may be sued for injunction (section 147) if a patent infringement has been or is likely to be committed by an employee or an agent in the course of activities of his undertaking. He shall be obligated to elimination (section 148) if he is the owner of the infringing objects or the means of infringement.

(2) If the patent infringement establishing a right to appropriate compensation is committed in the course of activities of an enterprise by an employee or agent, the obligation to pay compensation (section 150 (1)), to render accounts (section 151) and to provide information (section 151a) shall only affect the proprietor of the enterprise, unless the latter was neither aware of nor derived any advantage from the patent infringement.

(3) If a patent infringement is committed in the course of activities of an enterprise by an employee or agent, the proprietor of the enterprise, irrespective of these person's liability, shall be liable pursuant to section 150 (2) to (4), if he was aware or should have been aware of the patent infringement.

#### **Joint Liability**

**153.** Insofar as the same monetary claim (section 150) is brought against several persons, they shall be jointly liable.

#### **Limitation**

**154.** Section 1489 Austrian Civil Code shall apply to all monetary claims (section 150), the claim to rendering of accounts (section 151) and the claim to information (section 151a). The limitation of all of these claims shall also be interrupted by an action for rendering of accounts or a request for a declaratory decision (section 163).

#### **Process Patents**

**155.** In case of a patent for a process for the manufacture of a new substance, any substance with the same characteristics shall be regarded as having been manufactured according to the patented process until proof to the contrary.

#### **Preliminary Questions**

**156.** (1) The validity or effectiveness of a patent on which an infringement action is based may be judged separately by the court as a preliminary question, subject to subsection 3 below.

(2) The court of first instance shall forward to the Patent Office for attachment to the grant files a copy of any judgment in which the validity or effectiveness of a patent has been judged, certified to be a legally binding decision. A notation shall be made in the Patent Register concerning such a judgment.

(3) If a judgment dependent on whether the patent is null and void (section 48), the court shall examine this question independently first of all. On request of the court, the Patent Office shall issue a written expert opinion on whether the declaration of nullity is likely due to the documents submitted in the proceedings before the court. If the court considers the declaration of nullity of the patent likely on the basis of the taken evidence, it shall suspend the proceedings. If the defendant does not prove, within one month from the service of the decision to suspend, that he has filed a request for declaration of nullity with the Patent Office, that nullity declaration proceedings between the parties to the dispute are already pending, or that he has joined such proceedings as intervening third party, the court shall continue the proceedings on request of the plaintiff. In such case, the court shall decide without regard to the objection of nullity. However, a decision of the Nullity Department thereon passed before closure of the oral proceeding shall be taken into consideration.

(4) If proceedings relating to an infringement action have been suspended pursuant to subsection 3, the defendant, instead of proof that he has filed a request for declaration of nullity, that nullity declaration proceedings between the parties to the dispute are already pending, or that he has joined such proceedings as intervening third party, may prove that he has lodged an opposition against the patent.

(5) If proceedings of the court have been suspended because of proceedings pending before the Patent Office, the court shall continue the proceedings upon a party's request after entry into force of the decision on the preliminary question and shall take this decision as a basis therefor.

(6) If the validity or effectiveness of a patent has been judged differently by the Patent Office or the Supreme Patent and Trademark Chamber than the court in infringement proceedings, this may be the basis of an action for re-trial (section 530 (1) Code of Civil Procedure); in respect of the competence 532 (2) Code of Civil Procedure, and in respect of the suspension of appeal proceedings section 544 (1) Code of Civil Procedure shall apply *mutatis mutandis*; the time limit for bringing an action (section 534 (1) Code of Civil Procedure) shall be calculated as from the day on which the decision on the validity or effectiveness of the patent has become legally binding.

#### **Treatment of Prejudicial Proceedings by the Patent Office and the Supreme Patent and Trademark Chamber**

**157.** (1) If in proceedings concerning the declaration of nullity a decision on suspension (section 156) is filed, the following particulars shall apply to the proceedings as from such filing:

1. The proceedings shall be handled rapidly.
2. The party who has filed a decision on suspension shall immediately be confirmed by the mail reception center on the copy of the cover page, that it has initiated proceedings before the Nullity Department, has joined pending proceedings as intervening third party or has filed a decision on suspension in respect to pending proceedings.
3. The counterstatement (section 115 (2)) shall be filed within one month, which time limit is not extendible.
4. Proof of allegations that have not been submitted to the Patent Office and communicated to the opposing party not later than two weeks prior to the oral proceeding shall be taken into consideration only if the opponent has no objection thereto.
5. The time limits for filing an appeal (section 138) and for a counterstatement to the appeal shall be one month and not extendible.

(2) If, in proceedings relating to an opposition, a decision on suspension (section 156) is filed, subsection 1 shall apply *mutatis mutandis*.

#### **Provisional Protection**

**158.** If, before announcement of the grant of the patent (section 101c (2)), a claim under section 101 (5) is lodged before court, and if the judgment depends on whether such claim is legitimate, the court may suspend the proceedings until announcement of the grant. The suspended proceedings shall be continued after announcement of the grant on request or ex officio.



### **Patent Infringements liable to Prosecution**

**159.** (1) Anyone who infringes a patent shall be condemned by the court to a fine of up to 360 times the per diem rate. Any person who commits such an act commercially shall be sentenced to detention not exceeding two years.

(2) Likewise the proprietor or manager of an enterprise who fails to prevent the infringement of a patent committed by an employee or agent in the course of the activities of the enterprise shall be sentenced.

(3) If the proprietor of the enterprise pursuant to subsection 2 is a corporation, a collective, an association or another legal entity which is not a physical person, subsection 2 shall apply to the organs if they are guilty of having committed such an omission.

(4) Subsection 1 shall not apply to employees or agents who acted on instruction of their employer or the ordering party if, due to their economic dependency, they cannot be expected to refuse to commit such acts.

(5) Prosecution shall take place only at the request of the infringed party.

### **Private-Law Claims**

**160.** The assertion of claims under section 150 shall be subject to the provisions of Chapter XXI Austrian Code of Criminal Procedure, 1975, Federal Law Gazette No. 631. Both parties shall be entitled to appeal the judgment on the claims for damages.

### **Particularities of Criminal Prosecution**

**161.** Criminal proceedings shall be governed by section 119 (2) and sections 148, 149 and 157 *mutatis mutandis*. Section 156 shall also apply *mutatis mutandis* with the proviso that the one month time limit under section 156 (3) shall begin to run on the date on which the criminal court serves a request on the accused to attest that he has filed a request for declaration of nullity, that nullity declaration proceedings between the parties to the dispute are already pending, or that he has joined such proceedings as intervening third party, or that he has lodged an opposition. If the accused fails to file the request for declaration of nullity or the opposition in time, the court shall, if it considers nullity of the patent to be likely, file the request for declaration of nullity or the opposition ex officio. The parties in such proceedings shall be the court filing the request, the private plaintiff and the accused. The costs arising in the course of such proceedings shall be costs of the criminal proceedings.

### **Jurisdiction**

**162.** (1) The Commercial Court of Vienna shall have exclusive jurisdiction for actions and injunctions under this Federal Law. The board (section 7 (2) first sentence, section 8 (2) Jurisdictional Rules) shall decide irrespective of the value at dispute. This shall also apply to preliminary injunctions.

(2) Criminal matters under this Federal Law shall fall within the jurisdiction of the Vienna Provincial Court for Criminal Matters.

### **Requests for Declaratory Decisions**

**163.** (1) Any person who industrially produces, puts on the market, offers for sale or uses an object, applies a process industrially or intends to take such measures may request a declaratory decision at the Patent Office against the patentee or the exclusive licensee, that the object or the process is covered neither wholly nor partly by the patent.

(2) The patentee or the exclusive licensee may request a declaratory decision at the Patent Office against any person who industrially produces, puts on the market, offers for sale or uses an object, applies a process industrially or intends to take such measures, that the object or the process is covered wholly or partly by the patent.

(3) Requests under subsection 1 and 2 shall be rejected if the opposing party proves that an action for infringement in respect of the same object or the same process was brought before court prior to the submission of the request for a declaratory decision and is pending before court between the same parties.

(4) The request for a declaratory decision shall be related to only one patent plus its additional patents. The request shall be accompanied by a precise and clear description of the object or process, and drawings where necessary, in four copies. One copy of the description, and of the drawings if any, shall be attached to the final decision.

(5) When judging the scope of protection of the patent, which is the subject matter of the declaratory proceedings, the Patent Office shall take into consideration the contents of the grant files and the prior art proved by the parties.

(6) The procedural costs shall be borne by the requesting party, if the opposing party has not provoked the request by its conduct and has acknowledged the claim within the time limit set for its counterstatement.

(7) In addition the provisions governing contestation proceedings shall apply to the declaratory proceedings.

#### **Obligation to Provide Information on Patent Protection**

**165.** Any person who designates products in a manner likely to give the impression that they enjoy patent protection shall, on request, provide information on what property right such designation is based.

### **V. BIOPATENT MONITORING COMMITTEE**

**166.** (1) The Biopatent Monitoring Committee shall monitor and assess the impact of the implementation of Directive 98/44/EC of the European Parliament and of the Council dated July 6, 1998 on the legal protection of biotechnological inventions, Official Journal No. L 213 dated July 30, 1998, p. 13, into Austrian Law with regard to relevant national patents and utility models granted with effect for the Republic of Austria.

(2) The Biopatent Monitoring Committee shall particularly have the following duties arising from the resolution of the National Council dated April 16, 1998, 107/E (XX, GP):

1. inspecting the impact on human rights, animals, plants and ecological systems as well as on consumer protection, agriculture and developing countries of Austrian legal provisions passed to implement the Directive;
2. inspecting the national granting and decision finding practice, particularly in respect of section 1 (3) 2 and 3, section 2 (2) first sentence as well as sections 36 and 37;
3. inspecting if Austrian legal provisions passed to implement the Directive satisfy the following principles:
  - a) no patent protection for processes to clone humans and modify the human germ line;
  - b) no patent protection for processes that use human embryos, and for embryos themselves;
  - c) no further restriction of the “animal protection clause” defined in Article 6 (2) d of the Directive;
  - d) awarding of the stock-breeder and farmer privilege pursuant to Article 11 of the Directive;
  - e) meeting the obligations from the Convention on Biological Diversity, Federal Law Gazette No. 213/1995.
4. monitoring of the consequences on research and economic policies, particularly also on small and medium-sized enterprises.

(3) The Federal Minister for Transport, Innovation and Technology shall provide the National Council with a report on the observations and assessments of the Biopatent Monitoring Committee at three-year intervals. The first report shall be provided on June 30, 2012 at the latest.

**167.** (1) The Biopatent Monitoring Committee shall be comprised of the following members:

1. a representative of the Federal Chancellery;
2. a representative of the Federal Ministry for Health;
3. a representative of the Federal Ministry for Agriculture, Forestry, Environment and Water Management;
4. a representative of the Federal Ministry for Transport, Innovation and Technology;
5. a representative of the Federal Ministry of Economy, Family and Youth;
6. a representative of the Federal Ministry of Science and Research;
7. a representative of the Bioethic Commission;
8. a representative of the Austrian Economic Chamber;

9. a representative of the Austrian Chamber of Agriculture;
10. a representative of the Austrian Federation of Trade Unions;
11. a representative of the Austrian Chamber of Patent Attorneys;
12. a representative of the Austrian Bar Association;
13. a representative of the Federation of Austrian Industries;
14. a representative of the Austrian Intellectual Property Law Association;
15. a representative of the Ring of Austrian Industrial Patent Engineers;
16. a representative of the Austrian Consumer Association;
17. a representative of the Environment Agency Austria;
18. a representative of the Ökobüro – Coordination Office for Austrian Environmental Organizations.

(2) The Committee shall be open to dialog with interested citizens.

(3) The chairperson of the Biopatent Monitoring Committee and any deputies shall be elected by the members of the Committee. The Committee shall have a quorum if at least half of its members are present. The resolutions shall be passed by simple majority of the votes, in case of a tie the chairperson shall have the deciding vote.

(4) The Committee shall adopt internal rules of procedure and may establish working groups. In order to comply with its duties the Committee is authorized to consult experts and other consultants and to subcontract work against payment to them.

(5) The chairperson of the Committee shall be responsible for representing the Committee with third parties. The activities of the Committee shall be unpaid and honorary.

(6) The Committee's office at the Patent Office shall assist the Committee, its chairperson and any established working groups with the execution of their duties. The office shall prepare an estimate of costs and a final statement of accounts for each calendar year.

**168. to 172.** (*Cancelled; Federal Law Gazette I 2004/149*)

## **VI. TRANSITIONAL AND FINAL PROVISIONS**

### **Transitional Provisions**

**173.** (1) To patents and patent applications filed before January 1, 1994, when assessing the patentability section 2 no. 2, when assessing novelty section 3, as reason for a declaration of nullity section 48 (1) 2, as well as reason for opposition section 102 (2) 2, shall continue to be applied in their versions valid before entry into force of the Federal Law, Federal Law Gazette No. 634/1994.

(2) To the duration and expiration of patents based on patent applications filed before December 1, 1984, Article VI of the Amendment of the Patent Law 1984, Federal Law Gazette No. 234/1984, shall continue to be applied, with the duration of these patents of at least 20 years from the filing date. To rights claimed by the military or monopoly administration under sections 24 and 25 before January 1, 1996, sections 24, 25 and 173 no. 3 in the version valid before January 1, 1996, shall continue to be applied.

(3) Subject to subsection 1, to patents and patent applications, whose filing date is prior the date the Federal Law, Federal Law Gazette I No. 81/2007, entered into force, section 3 (2) 4 in the version valid before entry into force of the aforementioned Federal Law shall continue to be applied. Section 3 (3) second sentence shall be applied to patent applications pending at the time the Federal Law, Federal Law Gazette I No. 81/2007, enters into force, as far as a decision on the grant of the patent has not been issued.

**174.** (1) To patents and patent applications regarding to which the decision on publication has been passed before the entry into force of the Federal Law, Federal Law Gazette I No. 149/2004, section 4 (3), section 5 (1), section 20 (3), section 28 (2), sections 31, 32, 45 (1), section 52 (1), section 57 (1), section 60 (3) lit. a to c, section 62 (3) and (4), section 80 (1), section 81 (2) and (3), section 91 (3), sections 92a, 92b, 101, 102, 103 to 109, 111, 127 (1) and (4), sections 128, 129 (3), section 156 (4) and (5), sections 157, 158 and 171 (1), (3) and (5) shall continue to be applied in the version valid before the entry into force of the aforementioned Federal Law.

(2) To patents and patent applications under subsection 1, section 81a in the version of the Federal Law, Federal Law Gazette I No. 149/2004, shall be applied with the proviso that the announcement of the application shall take the place of the publication of the application.

(3) To patent applications that are regarded as withdrawn on the day the Federal Law, Federal Law Gazette I No. 149/2004, entered into force, but for which the time limit of four months under section 99 (5) in the version valid before the entry into force of the aforementioned Federal Law has not elapsed before this day, the legal consequence that the application is regarded as withdrawn shall not take effect if the requirements prescribed in section 99 (5) in the version valid before the entry into force of the aforementioned Federal Law are met.

(4) For patent applications, for which the time limit of two weeks after the decision on rejection was served under section 99 (4) in the version valid before the entry into force of the Federal Law, Federal Law Gazette I No. 149/2004, has not yet expired before the entry into force of the aforementioned Federal Law, the comment may still be filed late until the expiration of the time limit.

(5) Patent applications, for which the decision on publication has not been passed before the entry into force of the Federal Law, Federal Law Gazette I No. 149/2004, shall be continued under the provisions of proceeding valid after entry into force of the aforementioned Federal Law. The legal consequence of section 99 (5) in the version valid before the entry into force of the aforementioned Federal Law shall not take effect, if the time limit set to reply to the order of the Office has not yet expired on the day of entry into force of the aforementioned Federal Law. These patent applications shall, if a publication is not possible within the time limit under section 101 (1) in the version of the aforementioned Federal Law, still be published after the expiration of the time limit.

(6) For patent applications under subsection 5 the data referred to in section 87a (2) 3 can still be filed until the termination of the technical preparations for publication, if the time limit prescribed in section 87a (3) 1 in the version of the Federal Law, Federal Law Gazette I No. 149/2004, has already lapsed on the day of entry into force of the aforementioned Law.

(7) For patent applications under 5, for which a time limit to file a divisional application under section 92a (1), (2), (3) or (4) in the version valid before entry into force of the Federal Law, Federal Law Gazette I No. 149/2004, has been set, this time limit shall be considered as not having been set and the divisional application can still be filed until the expiration of the time limit set in section 92a in the version of the aforementioned Federal Law.

(8) Section 92b last sentence in the version of Federal Law, Federal Law Gazette I No. 149/2004, shall not apply to requests for conversion filed before the entry into force of the aforementioned Federal Law.

**175.** (1) Section 49 (5) to (7) in the version valid before entry into force of the Federal Law, Federal Law Gazette I No. 149/2004, shall continue to apply to requests for declaration of lack of title filed before entry into force of the aforementioned Federal Law.

(2) Sections 145a and 145b in the version valid before entry into force of the Federal Law, Federal Law Gazette I No. 149/2004, shall continue to apply, if the decision of the Appeal Department is passed after the day which is before the day of entry into force of the aforementioned Federal Law.

(3) Section 150 (3), section 156 (3) to (5) and section 161 in the version valid before entry into force of the Federal Law, Federal Law Gazette I No. 149/2004, shall continue to apply to actions filed before entry into force of the aforementioned Federal Law.

(4) A written power of attorney pursuant to section 21 (1) in the version of the Federal Law, Federal Law Gazette I No. 149/2004, shall only be considered as reference power of attorney if it is submitted to the Patent Office after entry into force of the aforementioned Federal Law.

**176.** (1) To patent applications submitted before the entry into force of the Federal Law, Federal Law Gazette I No. 149/2004, section 94 (2) in the version valid before entry into force of the aforementioned Federal Law, shall continue to apply.

(2) To requests submitted before the entry into force of the Federal Law, Federal Law Gazette I No. 149/2004, section 95 (2), section 132 (1), (3) and (4), section 168 (1), (2) and (3) first, fourth and fifth sentence in the version valid before entry into force of the aforementioned Federal Law shall continue to apply.

(3) To annual fees falling due on a day before the entry into force of the Federal Law, Federal Law Gazette I No. 149/2004, section 166 (2) to (10) in the version valid before entry into force of the aforementioned Federal Law shall continue to apply. This shall also apply to annual fees falling due after the entry into force of the aforementioned Federal Law, but which are duly paid before the entry into force of the aforementioned Federal Law.

**176a.** (1) Until the entry into force of section 101 in the version of the Federal Law, Federal Law Gazette I No. 149/2004, (Patent Law and Fee Amendment 2004)

1. section 81a in the version of the Federal Law, Federal Law Gazette I No. 42/2005 (Biotechnology Directive – Implementation Amendment) shall apply with the proviso that the announcement shall take the place of the publication,
2. section 87a (3) 1 in the version of the Federal Law, Federal Law Gazette I No. 42/2005 (Biotechnology Directive – Implementation Amendment) shall apply with the proviso that the information referred to in section 87a (2) 3 can be submitted until the decision on publication is passed.
3. section 87a (3) 2 in the version of the Federal Law, Federal Law Gazette I No. 42/2005 (Biotechnology Directive – Implementation Amendment) shall not apply.

(2) Until the entry into force of section 48 in the version of the Federal Law, Federal Law Gazette I No. 42/2005 (Biotechnology Directive – Implementation Amendment) section 48 shall apply in the version valid before the entry into force of the aforementioned Federal Law with the proviso that the term “biological material” takes the place of the term “microorganism.”

#### **Final Provisions**

**177.** Provisions of other Federal Laws referred to in this Federal Law shall be applied in their respective valid version if not stipulated otherwise.

**178.** All person related terms under this Federal Law shall relate to both sexes irrespective of the form chosen.

**178a.** The term “Complaint Department” contained in this Federal Law and in other provisions of Federal Laws and referring to the Patent Office’s Complaint Department shall in each case be replaced by the term “Appeal Department” in the grammatically correct version.

**179.** The following shall be entrusted with enforcing this Federal Law:

1. in terms of section 51 the Federal Government,
2. in terms of section 49 (4), sections 147 to 156, 158 to 162 and 165 the Federal Minister of Justice,
3. in terms of section 74 (2) and (3) where it relates to the appointment of judges as well as in terms of section 126 the Federal Minister for Transport, Innovation and Technology and the Federal Minister of Justice,
4. in terms of section 57 (2) the Federal Minister for Transport, Innovation and Technology in agreement with the Federal Minister for European and International Affairs,
5. in terms of section 58b (6) the Federal Minister for Transport, Innovation and Technology in agreement with the Federal Minister of Economy, Family and Youth,
6. in terms of all other provisions of this Federal Law the Federal Minister for Transport, Innovation and Technology.

**180.** (1) Sections 21, 60 (4) and (5), section 64 (3) and (4), sections 68, 78 (1), sections 79, 89 (1), sections 90, 94 (2), section 99 (5), section 166 (3) and (4), sections 168, 169, 171 (2), the title of section 172a, section 172a, the title of Chapter VI as well as section 173 in the version of the Federal Law, Federal Law Gazette No. 418/1992 shall enter into force at the beginning of the fourth month following the promulgation of the Federal Law, Federal Law Gazette No. 418/1992.

(2) Section 167 shall go out of force at the end of the third month following the promulgation of the Federal Law, Federal Law Gazette No. 418/1992.

(3) Section 4 (3), section 21, section 48 (1) 2, section 50, section 77, section 81 (3), section 90, section 91a (1), the title of section 92b, section 92b, section 102 (2) 2 and 4 as well as section 102 (5) in the version of the Federal Law, Federal Law Gazette No 212/1994, shall enter into force on April 1, 1994.

(4) Sections 22 and 28 (1), sections 36, 37 and 47 (1), section 80 (1), section 81 (7), section 110 and 112 (2), section 137 (2), sections 155 and 166 (3), section 173 (2) to (7) as well as section 173a in the version of the Federal Law, Federal Law Gazette No. 181/1996, shall enter into force on January 1, 1996.

(5) Sections 24, 25, the title of section 29, section 29, the title of section 38, sections 38 to 42 and 47 (3), section 110 (2), the title of section 164 as well as sections 164, 172 and section 173 no. 3 shall go out of force with the end of December 31, 1995.

(6) Section 3 (2), section 58 (2), sections 58a and 60 (3) lit. d, section 61 (6), section 62 (4) 3 to 5, section 64 (3) to (5), section 70 (5), section 81 (4), sections 93a, 93b and 94 (1), section 95 (1), section 166 (1), sections 172b and 172c as well as section 173 no. 2 in the version of the Federal Law, Federal Law Gazette I No. 175/1998, shall enter into force at the beginning of the second month following the promulgation of the Federal Law, Federal Law Gazette I No. 175/1998. Simultaneously section 62 (4) 3 in the version valid before and section 110 including its title shall go out of force.

(7) Section 36 (4) in the version of the Federal Law, Federal Law Gazette I No. 175/1998, shall enter into force on January 1, 1996.

(8) Section 78 (1), section 82 (2), sections 83, 120 (5), section 166 (1), (3) and (4) and section 168 (1), (3) and (4) in the version of the Federal Law, Federal Law Gazette I No. 143/2001, shall enter into force on January 1, 2002.

(9) Section 3 (4), section 5 (1), section 7 (1), section 20 (3) and (5), section 21 (1) and (2), section 22 (3) to (5), sections 22a, 28 (2), sections 31, 32, 43 (5), section 45 (1), section 48 (1) 1, 3 and 4, section 48 (3), section 49 (5) to (7), sections 50, 52 (1), section 57 (1), sections 57b, 58b (3), section 60 (3), section 62 (3) and (4), sections 62a, 63 (2), section 64 (2), (4) and (5), sections 68, 69, 70 (2) and (5), the title of section 71, sections 71, 72 (2), section 73 (4), (8) and (9), section 74 (1), (4), (10) and (11), section 76 (2) to (4), section 78 (2) and (3), section 79 (1), section 80 (1) and (2), section 81 (2) and (3), sections 81a, 82 (2) and (5), sections 83, 84 (1), section 87 (1), section 87a (2) and (3), section 91 (3), sections 91a, 92a, 92b, 93 (1), sections 94, 95 (2), the title of section 99, sections 99, 100, the title of section 101, sections 101, 101a, the title of section 101b, section 101b, the title of section 101c, section 101c, the title of section 101d, sections 101d, 102, 103 (2) to (6), sections 104, 105, the title of section 107, section 107, the title of section 108, sections 108, 112 (2), section 114 (3), section 115 (2), the title of section 115a, sections 115a, 120 (4) and (5), section 122 (1), sections 125, 127 (1) and (4), section 128, the title of section 128a, sections 128a, 129 (2) 2, section 129 (3), section 137 (2), section 138 (2), section 139 (2) and (3), sections 141, 142 (1) 1, the title of section 145a, section 145a, the title of section 145b, sections 145b, 148, 150 (3) and (4), the title of section 151a, sections 151a, 152 (2) and (3), sections 154, 156 (3) to (6), the title of section 157, section 157, the title of section 158, sections 158, 159, 160, 161, the title of Chapter VI, the title of section 173, sections 173 to 176, the title of section 177 and sections 177 to 179 in the version of the Federal Law, Federal Law Gazette I No. 149/2004 shall enter into force at the beginning of the seventh month following the promulgation of the aforementioned Federal Law. Simultaneously section 4 (3), section 49 (6), section 76 (5), section 90, the title of section 106, section 106, the title of section 109, section 109, the title of section 111, section 111, section 129 (2) 3, section 132, Chapter V, sections 172b, 172c and 173a in the version valid before shall go out of force.

(10) Section 21 (4) and (5), sections 58, 58a (4), section 60 (1) and (2), sections 61, 72 (1), section 74 (3), section 75 (1), section 115 (1), section 119 (3) and section 181 in the version of the Federal Law, Federal Law Gazette I No. 149/2004, shall enter into force at the beginning of the day following the promulgation of the aforementioned Federal Law. Simultaneously sections 59 and 60 (4) and (5) in the version valid before shall go out of force.

(11) Section 1 (2) to (4), sections 2, 3 (3), sections 22b, 22c, 36 (2) to (5), section 37, the title of section 38, sections 38, 47 (1), the title of section 81a, sections 81a, 87a (2) and (3), sections 89a, 102 (2) 4 and section 182 in the version of the Federal Law, Federal Law Gazette I No. 42/2005 (Biotechnology Directive – Implementation Amendment) shall enter into force at the beginning of the day following the promulgation of the aforementioned Federal Law. Simultaneously section 36 (4) to (7) and the title of section 37 in the version valid before as well as section 81a, section 87a (2) and (3) and section 102 (2) 4 in the version of the Federal Law, Federal Law Gazette I No. 149/2004 (Patent Law and Fee Amendment), shall go out of force.

(12) Section 48 (1) 4 and section 48 (3) in the version of the Federal Law, Federal Law Gazette I No. 42/2005 (Biotechnology Directive – Implementation Amendment) shall enter into force with the entry into

force of section 101 in the version of the Federal Law, Federal Law Gazette I No. 149/2004 (Patent Law and Fee Amendment 2004). Simultaneously section 48 (1) 4 and section 48 (3) in the version of the Federal Law, Federal Law Gazette I No. 149/2004 (Patent Law and Fee Amendment 2004) shall go out of force.

(13) Section 159 (3) in the version of the Federal Law, Federal Law Gazette No. 151/2005, shall enter into force on January 1, 2006.

**180a.** (1) Section 22 (1), sections 57a, 60 (3), section 61 (3), section 62 (2) and (7), section 81 (4), the title of section 111a, section 111a (3) and section 181a in the version of the Federal Law, Federal Law Gazette I No. 130/2005, shall enter into force at the beginning of the day following the promulgation of the aforementioned Federal Law.

(2) Section 64 (4), section 67 (1), section 75 (2), section 79 (2), sections 92 and 95 (3) in the version of the Federal Law, Federal Law Gazette I No. 130/2005, shall enter into force on January 1, 2006.

(3) The order of the Federal Ministry of Commerce and Reconstruction dated October 2, 1965 on the kind and the wearing of official robes of the members of the Supreme Patent and Trademark Chamber, Federal Law Gazette No. 293/1965, the order of the Federal Minister for Economic Affairs on the Implementation of the Patent Law 1970, the Law Introducing Patent Treaties, the Supplementary Protection Certificate Law 1996, the Utility Model Law, the Semiconductor Protection Law, the Trademark Protection Law 1970 and the Design Protection Law 1990 (Patent, Utility Model, Trademark and Design Order – PGMMV), Federal Law Gazette No. 226/1994, and the order of the Federal Minister for Economic Affairs relating to the issuance of official publications by the Patent Office, Federal Law Gazette II No. 237/1997, shall go out of force on December 31, 2005.

(4) Section 151a, the title of section 151b, sections 151b and 183 in the version of the Federal Law, Federal Law Gazette I No. 96/2006, shall enter into force at the beginning of the day following the promulgation of the aforementioned Federal Law.

(5) Section 1 (1), section 3 (2) and (3), sections 22a, 60 (3) 1 and section 173 (3) in the version of the Federal Law, Federal Law Gazette I No. 81/2007, shall enter into force with the entry into force of the revised version of the European Patent Convention.

(6) Section 21 (4) in the version of the Federal Law, Federal Law Gazette I No. 81/2007, shall enter into force at the beginning of the day following the promulgation of the aforementioned Federal Law.

(7) Section 54 (2), section 58b (6), section 74 (9), section 157 (1) 2, sections 178a and 179 no. 5 and 6 in the version of the Federal Law, Federal Law Gazette I No. 126/2009, shall enter into force on January 1, 2010.

(8) Section 58 (1), section 58a (1) and (2), section 58b (3) and (5), section 60 (3) 1, section 62 (1), section 64 (2) second sentence and Chapter V in the version of the Federal Law, Federal Law Gazette I No. 126/2009, shall enter into force at the beginning the day following the promulgation of the aforementioned Federal Law.

**180b.** Section 76 (1) 2 in the version of the Federal Law, Federal Law Gazette I No. 135/2009, shall enter into force on January 1, 2010.

**181.** Orders on the basis of this Federal Law in its respective valid version may already be enacted on the day following the promulgation of the Federal Law to be implemented; they shall, however, not enter into force prior to the legal provision to be implemented.

**181a.** (1) By this Federal Law Art. 10 (6) of the Directive 2001/83/EC on the Community code relating to medicinal products for human use, as amended by the Directive 2004/27/EC of the European Parliament and of the Council of March 31, 2004 amending Directive 2001/83/EC, Official Journal No. L 136 dated April 30, 2004, p. 34 is implemented.

(2) By this Federal Law Art. 13 (6) of the Directive 2001/82/EC on the Community code relating to veterinary medicinal products, as amended by the Directive 2004/28/EC of the European Parliament and of the Council of March 31, 2004 amending Directive 2001/82/EC, Official Journal No. L 136 dated April 30, 2004, p. 58 is implemented.

**182.** By this Federal Law the Directive 98/44/EC of the European Parliament and the Council dated July 6, 1998 on the legal protection of biotechnological inventions, Official Journal No. L 213 dated July 30, 1998, p. 13 is implemented.

**183.** By this Federal Law the Patent Law is adjusted to the Directive 2004/48/EC of the European Parliament and of the Council on the Enforcement of Property Rights, Official Journal No. L 157 dated April 30, 2004, p. 45.