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# Patents Act<sup>1</sup>

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Amended by the following acts

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26.06.1996	RT I 1996, 49, 953	26.07.1996
16.06.1998	RT I 1998, 64, 1003	25.07.1998
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29.01.2003	RT I 2003, 18, 106	01.04.2003
10.03.2004	RT I 2004, 20, 141	01.05.2004
09.03.2005	RT I 2005, 18, 104	08.04.2005
15.06.2005	RT I 2005, 39, 308	01.01.2006
08.12.2005	RT I 2005, 70, 540	01.01.2006
07.12.2006	RT I 2006, 58, 439	01.01.2007
24.01.2007	RT I 2007, 13, 69	15.03.2007
10.12.2008	RT I 2008, 59, 330	01.01.2009
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22.04.2010	RT I 2010, 22, 108	01.01.2011 enters into force on the day determined in the Decision of the Council of the European Union on abrogation of the derogation established in respect of the Republic of Estonia on the bases provided for in Article 140 (2) of the Treaty on the Functioning of the European Union, Decision No 2010/416/EU of the Council of the European Union of 13 July 2010, (OJ L 196, 28.07.2010, pp 24-26).
09.11.2011	RT I, 29.11.2011, 1	01.01.2012
07.12.2011	RT I, 28.12.2011, 1	01.01.2012
19.06.2014	RT I, 12.07.2014, 1	01.01.2015
19.06.2014	RT I, 29.06.2014, 109	01.07.2014, titles of ministers are replaced, starting with the version in force from 1 July 2014, pursuant to subsection 107 <sup>3</sup> (4) of the Government of the Republic Act.

## Chapter I

# GENERAL PROVISIONS

## § 1. Purpose of Act

This Act regulates the relations which arise in connection with the legal protection of patentable inventions (hereinafter patent protection) in the Republic of Estonia.

## § 2. Legislation providing for patent protection

Patent protection is provided for by this Act, other Acts and regulations issued by the Government of the Republic or ministers on the basis of and for the implementation of such Acts.

## § 3. Equality of rights and obligations of natural and legal persons of the Republic of Estonia and of foreign states

The rights and obligations prescribed in this Act apply equally to natural and legal persons of the Republic of Estonia and of foreign states (hereinafter persons) unless the legislation of the Republic of Estonia or international agreements ratified by the Riigikogu provide otherwise.

## § 4. Application of international agreements

If this Act is contrary to an international agreement, the provisions of the international agreement shall prevail.

## Chapter II PATENT PROTECTION AND PATENTABILITY

### § 5. Patent protection

(1) Inventions of any field of technology may be protected by a patent if the invention complies with the criteria of patentability provided for in § 8 of this Act and is not considered to be unpatentable pursuant to the provisions of § 7.

(2) An invention is granted patent protection upon registration of the invention in the register of patents. The registration of an invention in the register of patents is deemed to be the grant of a patent.

(3) Medicinal products and plant protection products which contain an active substance protected by a patent may be granted supplementary legal protection (hereinafter supplementary protection) under the conditions and pursuant to the procedure provided for in Chapter VIII<sup>1</sup> of this Act.  
[RT I 2004, 20, 141 – entry into force 01.05.2004]

### § 6. Subject of invention

(1) The subject of an invention may be a device, process, material, including biological material, or a combination thereof.

(2) The following, inter alia, are not regarded as the subject of inventions:

- 1) discoveries, including descriptions of the formation or development of the human body or sequence or partial sequence of human gene, scientific theories and mathematical methods;
- 2) schemes, rules and methods for performing mental acts or doing business;
- 3) design documentation for and plans of constructions, buildings or areas;
- 4) symbols;
- 5) algorithms for computers and computer programs;
- 6) designs;
- 7) presentations of information;
- 8) plant and animal varieties;
- 9) layout-designs of integrated circuits.

(3) For the purposes of this Act, “biological material” means any material, including micro-organisms, which contains genetic information and is capable of reproducing itself or being reproduced in a biological system.  
[RT I 2003, 18, 106 – entry into force 01.04.2003]

### § 7. Unpatentable inventions

(1) The following shall not be protected by a patent:

- 1) inventions which are contrary to public order and morality;
- 2) methods of treatment and diagnostic methods practised for treatment or diagnosis of diseases of humans or animals;
- 3) [Repealed – RT I 2003, 18, 106 – entry into force 01.04.2003]
- 4) [Repealed – RT I 1998, 64, 1003 – entry into force 25.07.1998]

(2) The following biotechnological inventions shall not be protected by a patent:

- 1) processes for cloning human beings;
- 2) processes for modifying the germ line genetic identity of human beings;  
[RT I 2009, 4, 24 – entry into force 01.03.2009]
- 3) uses of human embryos for commercial purposes, including processes prohibited by the Artificial Insemination and Embryo Protection Act;
- 4) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial benefit to health protection of humans or animals, and animals resulting from such processes;  
[RT I 2009, 4, 24 – entry into force 01.03.2009]
- 5) essentially biological processes for the derivation of biological materials, plants or animals, except microbiological processes for the derivation of micro-organisms;  
[RT I 2009, 4, 24 – entry into force 01.03.2009]
- 6) inventions the application of which is confined to a single plant or animal variety.

(3) For the purposes of this Act, “essentially biological process for the derivation of a biological material, plant or animal” means a process which consists entirely of natural phenomena such as crossing and selection.  
[RT I 2009, 4, 24 – entry into force 01.03.2009]

(4) For the purposes of this Act, “microbiological process” means any process involving or performed upon or resulting in microbiological material.

### **§ 7<sup>1</sup>. Classification of inventions**

Inventions are classified according to the international patent classification adopted under the Strasbourg Agreement Concerning the International Patent Classification (RT II 1996, 4, 15).

### **§ 8. Criteria of patentability**

(1) An invention is patentable if it is new, involves an inventive step and is susceptible to industrial application.

(2) An invention is considered to be new if it does not form part of the state of the art. The state of the art is held to comprise all the technical information made available to the public by means of written or oral description, by use, or in any other way, in any part of the world before the filing date of a patent application or before the date of priority if priority is claimed. In determining novelty, the contents of patent applications and the contents of registration applications of utility models which were filed with the Patent Office earlier pursuant to the Utility Models Act shall also be taken into consideration according to their filing dates or, if priority is claimed, dates of priority provided that the patent applications are published or deemed to be published pursuant to § 24 of this Act and registration applications of utility models are published pursuant to § 33 of the Utility Models Act.  
[RT I 2009, 4, 24 – entry into force 01.03.2009]

(3) In determining the state of the art, any information disclosing the subject matter of an invention is not taken into consideration, provided that a corresponding request is submitted, if such information is disclosed by a person who is entitled to the patent pursuant to § 12 of this Act or another person with the knowledge of the said person within twelve months before the filing date of the first patent application or registration application of a utility model containing the invention in the Republic of Estonia or abroad. The request shall be filed together with the patent application or not later than two months before the publication of the patent application pursuant to § 24. If another person acquired the information unlawfully or the information was published unlawfully or without the knowledge of the person who has the right to apply for the patent, the request may be filed in the course of examination of the patent application or in case the patent is contested. Evidence supporting the request shall be appended to the request.  
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(4) An invention is considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art.

(5) An invention is considered as susceptible to industrial application if it can be manufactured or used in economy.

### **§ 9. Unity of invention**

(1) Patent protection for only one invention or a group of inventions so linked as to form a single general inventive concept can be applied for in a patent application.

(2) If a patent application contains several inventions, the applicant may separate the inventions from the patent application during the processing of the patent application and file separate patent applications pursuant to §§ 19 and 20 of this Act. The filing date of the initial patent application shall be deemed to be the filing date of any separate patent applications filed for separated inventions (hereinafter separated patent application) if

the invention corresponds to the subject matter of the invention as disclosed in the initial patent application. Separated patent applications may be filed for up to six months after termination of the processing of the patent application pursuant to § 28 or completion of the processing of the patent application pursuant to § 31.

(3) If patent claims contain several inventions not forming a single general inventive concept, the applicant shall separate the inventions which violate the requirement for unity from the patent application at the request of the Patent Office within the term set by the Patent Office. Subsection (2) of this section applies to separated inventions.

[RT I 2003, 18, 106 – entry into force 01.04.2003]

## **§ 10. Scope of patent protection and patent claims**

(1) The scope and contents of patent protection shall be determined by the wording of patent claims. The wording of patent claims shall be interpreted based on the level of knowledge of a person skilled in the art at the time of filing the patent application. The description, drawings and other illustrative material shall be used to interpret the wording of patent claims.

(2) Patent claims shall define the subject matter of the invention, for which patent protection is applied, in words in a clear, concise and short manner. In patent claims, the subject matter of an invention shall be presented as a set of essential technical features of the invention. Patent claims consist of one or several claims.

[RT I 2009, 4, 24 – entry into force 01.03.2009]

(3) Patent claims consist of independent and dependent claims. Patent claims shall not contain more than one independent claim with regard to one invention, unless:

- 1) the invention consists of several products grouped together, or
- 2) the device or product is used for various purposes, or
- 3) such alternative solutions to the technical problem exist as not to allow the subject-matter of the invention to be covered by a single claim.

(4) Where the derogations referred to in subsection (3) of this section apply, the requirement for unity of invention must be met.

(5) The abstract of the subject matter of an invention has no legal effect upon disclosing the subject matter of the invention or determining the scope of patent protection. The abstract shall merely serve for use upon disclosing technical information concerning the invention.

[RT I 2003, 18, 106 – entry into force 01.04.2003]

## **§ 11. Priority**

[RT I 2003, 18, 106 – entry into force 01.04.2003]

(1) Priority is the preferential right of the person who is the first to file a patent application or registration application of a utility model or the legal successor of such person to apply for patent protection for an invention. The filing date of the first patent application or registration application of a utility model is considered to be the date of priority.

(2) If a patent application is filed with the Patent Office within twelve months from the filing date of the first patent application or registration application of a utility model and priority is claimed, priority shall be established:

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

- 1) on the basis of the filing date of the first patent application or registration application of a utility model in any contracting member country to the Paris Convention of the Protection of Industrial Property (RT II 1994, 4/5, 19) or member state of the World Trade Organisation;
- 2) on the basis of the filing date of the first patent application or registration application of a utility model in a state which is not a contracting member country to the Paris Convention for the Protection of Industrial Property or in a state which is not a member of the World Trade Organisation if such state guarantees equivalent conditions for first patent applications and registration applications of utility models filed in the Republic of Estonia.

(3) Priority for a patent application filed on the basis of corrections and supplements to an earlier patent application which alter the subject matter of the invention shall be established, if priority is claimed, based on the filing date of such corrections and supplements with the Patent Office.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(4) Priority for a patent application which is separated from an earlier patent application pursuant to subsection 9 (2) or (3) of this Act shall be established, if priority is claimed, on the basis of the date of priority of the earlier patent application.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(5) [Repealed – RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(6) If priority is claimed, priority shall be established on the basis of the filing dates of several patent applications or registration applications of utility models filed earlier. In the case of several patent applications or registration applications of utility models filed earlier, the twelve-month term specified in subsection (2) of this section shall be calculated from the earliest date of priority.  
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(6<sup>1</sup>) If priority is claimed, priority for a patent application filed with the Patent Office after expiry of the twelve-month term specified in subsection (2) of this section shall be established on the basis of the filing date of a first patent application or registration application of a utility model pursuant to subsection (2) of this section if:

- 1) the reasons for the failure to comply with the aforesaid term are appended to the priority claim;
- 2) the reasons stated pursuant to clause 1) of this subsection prove that the failure to file the application within the term was unintentional;
- 3) the patent application was filed within two months from the date on which the aforesaid term expired.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(7) [Repealed - RT I 2003, 18, 106 – entry into force 01.04.2003]

## **Chapter III**

### **RIGHT TO APPLY FOR PATENT**

#### **§ 12. Right to patent**

(1) The right to apply for a patent and to become the proprietor of a patent is vested in the author of an invention and a legal successor of the author.

(2) If an invention is created in the performance of contractual obligations or duties of employment, the right to apply for a patent and to become the proprietor of the patent is vested in the author or other person pursuant to the contract or employment contract, unless otherwise prescribed by the legislation of the country of the residence or seat of the applicant.

(3) Any person who pursuant to subsections (1) and (2) of this section has the right to apply for a patent may transfer such right to another person.

(4) The right to apply for a patent shall transfer to a legal successor.

(5) If two or more persons apply for a patent regarding the same invention independently of each other, the right to apply for a patent is vested in the person who is indicated as the applicant in the patent application which has been filed earlier or which has an earlier date of priority provided that such patent application has not been withdrawn prior to publication pursuant to this Act or the Patent Office has not rejected the patent application or deemed the patent application to be withdrawn.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

#### **§ 13. Author of invention**

(1) The author of an invention (hereinafter author) is a natural person who has created an invention as a result of his or her inventing activities.

(2) If an invention is created as a result of the joint inventing activities of several natural persons, such persons are joint authors.

(3) In the case of joint authorship, all rights arising from the authorship are exercised by the authors jointly, including the right to apply for a patent and to become the proprietor of the patent, unless they have entered into a written agreement which prescribes otherwise.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

(4) [Repealed - RT I 2004, 20, 141 – entry into force 01.05.2004]

(5) [Repealed - RT I 2004, 20, 141 – entry into force 01.05.2004]

(6) Authorship is inalienable and unspecified in term.

(7) An author has the right to a pseudonym and he or she may:

- 1) request the disclosure of his or her name as the author;
- 2) prohibit the disclosure of his or her name as the author;
- 3) revoke at any time the prohibition to disclose his or her name.

(8) An author has the right to receive fair proceeds from the profit received from the invention.

(9) The proprietary rights of an author are transferable and inheritable.

### **§ 13<sup>1</sup>. Representation in performance of acts related to patent protection**

(1) Acts related to patent protection shall be performed at the Patent Office and at the Industrial Property Board of Appeal (hereinafter Board of Appeal) by interested persons or patent attorneys who are expressly authorised by the interested persons and who have been awarded patent attorney qualifications for operation in the area of inventions pursuant to the Patent Attorneys Act. An interested person or patent attorney may involve, at own expense, an interpreter or adviser without the right of representation in an oral procedure at the Patent Office or at the Board of Appeal.

(2) A person whose residence or seat is not located in the Republic of Estonia shall authorise a patent attorney as the person's representative for the performance of acts related to patent protection at the Patent Office and at the Board of Appeal, except filing of a patent application, filing of a request for acceptance of an international application for national processing as specified in subsection 33 (1) of this Act and payment of all the state fees specified in this Act.

(3) If acts related to patent protection are performed at the Patent Office or at the Board of Appeal by several persons together, they may authorise a patent attorney as their representative or choose a representative from among themselves (hereinafter joint representative) whose residence or seat is in the Republic of Estonia. A joint representative has the right to perform all acts related to patent protection, unless otherwise deriving from the authorisation granted to the joint representative.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

## **Chapter IV PATENT RIGHTS**

[RT I 2004, 20, 141 - entry into force 01.05.2004]

### **§ 14. Proprietor of patent**

(1) The proprietor of a patent is the person in respect of whom the last entry as the proprietor of the patent has been made in the register of patents.

(2) The proprietor of a patent has an exclusive right to the invention protected by the patent. Only the proprietor of a patent has the right to exercise rights arising from the patent and to prohibit other persons from exercising those rights.

(2<sup>1</sup>) The proprietor of a patent may transfer or waive the rights of the proprietor of the patent in full or in part to another person or to pledge the patent pursuant to the procedure provided by this Act. Patent rights may be transferred to a legal successor of the proprietor of the patent provided that the registration in the register of patents is valid.

(3) The exclusive right of the proprietor of a patent may only be restricted by this Act or by the rights of other persons.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

### **§ 15. Exclusive right of proprietor of patent**

(1) The exclusive right of the proprietor of a patent means that during the term of validity of the patent and without the permission of the proprietor of the patent no person shall:

- 1) [Repealed - RT I 1999, 84, 764 – entry into force 01.01.2000]
- 2) manufacture, use, distribute, sell or offer for sale products protected by the patent or acquire (incl. by way of importation) such products for the aforesaid purposes;
- 3) manufacture, sell or offer for sale components which form a significant part of the product protected by the patent or acquire and export such components for the manufacture or preparation of the product, except if the components are other independent products;
- 4) use or offer for use to third persons the patented process;
- 5) use, distribute, sell or offer for sale a product manufactured according to the patented process, or to acquire (including by way of importation) such products for the aforesaid purposes.

(2) In the case of products manufactured according to a patented process, the manufacture, use, distribution, sale, offering for sale or acquisition (including by way of importation) for the aforesaid purposes of a similar product without the authorisation of the proprietor of the patent is considered an infringement of the exclusive right of the proprietor of the patent unless it is proved that the similar product is manufactured according to a different process.

## **§ 15<sup>1</sup>. Extension of exclusive right of proprietor of patent**

(1) In the case of a patented biological material, the exclusive right of the proprietor of the patent shall extend to any biological material derived from that biological material through propagation or multiplication in an identical or divergent form and possessing the same characteristics.

(2) In the case of a biological material produced according to a patented process, the exclusive right of the proprietor of the patent shall extend to any biological material derived from the biological material obtained through the patented process through propagation or multiplication in an identical or divergent form and possessing the same characteristics.

(3) In the case of an invention containing genetic information, the exclusive right of the proprietor of the patent shall extend to all biological material in which the invention is incorporated and which performs its function according to the said genetic information, except the human body and parts thereof.

## **§ 16. Acts which do not constitute infringement of exclusive right of proprietor of patent**

The following acts do not constitute infringement of the exclusive right of the proprietor of a patent:

1) the use of the patented invention on board of ships of other states (within the hull, machinery, rigging, radio-navigation equipment or other equipment) if such ships are temporarily or accidentally in the waters of the Republic of Estonia and the invention is used solely for the purposes of the ship;

2) the use of the patented invention within the construction or auxiliary equipment of aircraft or land vehicles of other countries, or in the operation of the vehicles or equipment if such vehicles are temporarily or accidentally in the Republic of Estonia;

3) the use of the patented invention in testing related to the invention itself, including the use of a medicinal product containing the patented invention in clinical trials of the medicinal product;

[RT I 2009, 4, 24 – entry into force 01.03.2009]

4) the single preparation of a medicinal product containing the patented invention on the basis of a prescription in a pharmacy and the use of such medicinal product;

5) the private non-commercial use of the patented invention if such use does not harm the interests of the proprietor of the patent;

6) the use, distribution, sale or offer for sale in the Republic of Estonia of the patented invention by the proprietor of the patent or with the proprietor's consent;

7) the propagation or multiplication of biological material placed on the market by the proprietor of the patent or with the proprietor's consent, where the multiplication or propagation necessarily results from the application for which the biological material was marketed, provided that the biological material obtained is not subsequently used for other propagation or multiplication.

## **§ 17. Right of prior use**

(1) A person who, prior to the filing of a patent application for an invention by another person, has, in good faith and independently of the applicant, used the same invention for industrial application in the Republic of Estonia, may continue to use the invention retaining the same general nature of application. Use is in good faith unless the user knew or should have known that the filing of a patent application for the invention was intended.

(2) The right of prior use also belongs to a person who has, in good faith, made serious preparations for the industrial application of an invention in the Republic of Estonia.

(3) The right of prior use can only be transferred to another person together with the enterprise with regard to which the right of prior use is established or in which it was intended to be used.

## **§ 17<sup>1</sup>. Exhaustion of rights**

The proprietor of a patent has no right to prohibit acquisition (including importation), use, distribution, sale or offer for sale of a product containing the patented invention if the product has been put on the market in the territory of the Republic of Estonia or a contracting party to the Agreement on the European Economic Area by the proprietor of the patent or with the proprietor's consent.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

## **§ 18. Provisional protection**

(1) An invention shall be granted provisional protection as of the filing date of a patent application until the publication date of the notice of grant of the patent.

(2) Other persons who commence or continue to use an invention after the publication of a patent application prescribed in § 24 of this Act are deemed, after the publication date of the notice of grant of the patent, to

infringe the exclusive right of the proprietor of the patent unless such persons have the right of prior use pursuant to § 17 of this Act.

(3) Other persons who commence to use an invention during the period between the filing date of the patent application and the publication date of the patent application are not deemed to infringe the exclusive right of the proprietor of the patent unless the person knew or should have known that a patent application was filed with regard to the invention or the applicant notified the person in writing of the filing of the patent application before the publication of the patent application by the Patent Office. Other persons whom an applicant notifies of the filing of the patent application are deemed, after the publication date of the notice of grant of the patent, to infringe the exclusive right of the proprietor of the patent as of the date of receipt of the notice concerning the filing of the patent application unless such persons have the right of prior use pursuant to § 17 of this Act.

(4) The scope of provisional protection shall be determined by the terms of patent claims included in a published patent application. After the grant of a patent, the scope of provisional protection shall be specified according to the patent claims of the patent granted.

### **§ 18<sup>1</sup>. Compensation for classified inventions relating to national defence**

(1) In the case of an invention relating to national defence classified on the initiative of the minister responsible for the area, the proprietor of the patent and the author have the right to receive, during the period when the invention is classified, compensation for the restriction on the use of the invention due to classification. The author does not have the right to receive the aforesaid compensation if he or she has transferred this right.

(2) The payment and the amount of the compensation shall be decided by the minister responsible for the area, taking into account, inter alia:

- 1) the estimated service life of the invention when classified;
- 2) the commercial profit which the author or the proprietor of the patent would presumably gain from the use of the invention if the invention was not classified.

(3) Compensation may be paid as a lump sum payment or in instalments.

(4) The specific conditions and procedure for the payment of compensation may be established by a regulation of the minister responsible for the area.

(5) The author or the proprietor of the patent has no right to receive the compensation specified in subsections (1) – (4) of this section if the author or the proprietor of the patent has agreed separately with the Ministry of the Defence on his or her remuneration for the use of the classified invention for national defence purposes.

(6) Disputes over the amount of compensation and remuneration shall be settled by Harju County Court.  
[RT I 2009, 4, 24 – entry into force 01.03.2009]

## **Chapter V PATENT APPLICATION AND PROCESSING THEREOF**

### **§ 19. Patent application**

(1) A patent application shall include the following documents:

- 1) a request for the grant of a patent which contains a request to be granted the patent, information concerning the applicant and author and the name of the invention;
- 2) a description of the invention in which the subject matter of the invention shall be disclosed in a sufficiently clear and concise manner which enables a person skilled in the art to make the invention;
- 3) patent claims consisting of one or several claims;
- 4) drawings or other illustrative material (hereinafter drawings) referred to in the description of the invention or patent claims;
- 5) an abstract of the subject matter of the invention.

(2) The following documents shall be annexed to a patent application:

- 1) an authorisation document if the patent application is filed via a patent attorney;
- 2) documents certifying the priority claim, unless a specification provided for in § 20<sup>1</sup> of this Act applies;
- 3) a document certifying the deposit of a biological material, including micro-organism strain, if the subject of the invention is a biological material or the invention requires the use of a biological material and if the said biological material is not available to the public and it cannot be described in the description of the invention in a manner which would enable a person skilled in the art to make the invention;
- 4) an application for classifying the patent application and a certificate of the Ministry of Defence or a competent authority of a foreign state concerning classification of the invention if the patent application contains either an invention relating to national defence classified by the minister responsible for the area or an invention classified in the foreign state the application for the patenting of which has been submitted on the basis of an international agreement;

[RT I 2009, 4, 24 – entry into force 01.03.2009]

5) the permission of the competent authority of the foreign state for patenting the invention in the Republic of Estonia if the invention is classified in a foreign state and the application for classifying specified in clause 4) of this subsection is submitted by the applicant instead of the competent authority of the foreign state.  
[RT I 2009, 4, 24 – entry into force 01.03.2009]

(3) If the applicant is not the author, the applicant shall declare, in the request for the grant of a patent or another document annexed to the patent application, the legal basis for the right to apply for the patent as specified in § 12 of this Act.

(4) The requirements for the contents and form of documents included in patent applications (hereinafter contents and form) shall be established by the minister responsible for the area. The minister responsible for the area shall establish, inter alia:

[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

- 1) the types of inventions by subjects of invention;
- 2) the structure of patent claims, the list of features of inventions in patent claims and the particulars for the preparation of patent claims, including for ensuring the unity of inventions, by subjects of invention;
- 3) the structure of the request for the grant of a patent, the description of an invention, the abstract of the subject matter of an invention and the information that each structural part contains;
- 4) information contained in other patent application documents;
- 5) the data medium on which documents shall be submitted;
- 6) national and international standards applied to documents and the format and documentation of information contained therein

[RT I 2005, 18, 104 – entry into force 08.04.2005]

(5) Patent applications shall be filed in Estonian. The name of the invention in the request for the grant of a patent and the abstract of the subject matter of the invention shall be submitted in Estonian and English.

(6) The Patent Office has the right to request the submission of the Estonian translation of any foreign language document included in a patent application, document annexed to a patent application or document submitted in the course of processing within a term of two months, unless a different term is provided for in this Act.

## **§ 20. Filing of patent applications**

(1) Patent applications shall be filed with the Patent Office.

(2) A state fee for the filing of a patent application shall be paid within two months from the filing date of the patent application. This term for the payment of the state fee shall not be extended.

[RT I 2009, 4, 24 – entry into force 01.03.2009]

(3) If patent claims containing more than ten claims are filed, a supplementary state fee shall be paid for each claim starting with the eleventh claim.

(4) The procedure for filing patent applications shall be established by the minister responsible for the area.

[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

## **§ 20<sup>1</sup>. Filing, amendment or correction of priority claim**

(1) Priority shall be claimed upon filing of a patent application or within sixteen months from the date of priority.

(2) Documents certifying a priority claim shall be filed together with the patent application or filed with the Patent Office within sixteen months from the date of priority.

(3) Documents certifying a priority claim need not be filed if priority is claimed on the basis of a first patent application or registration application of a utility model in the Republic of Estonia.

(4) Documents certifying a priority claim need not be filed if priority is claimed on the basis of a first patent application or registration application of a utility model filed abroad and published in a digital database to which the Patent Office has ongoing unrestricted access free of charge.

(5) A list of countries to which subsection (4) of this section applies shall be published in the official gazette of the Patent Office.

(6) Translations of foreign language documents certifying a priority claim shall be submitted at the request of the Patent Office pursuant to the provisions of subsection 23 (2) of this Act.

(7) A priority claim may be amended or corrected within sixteen months from the date of priority. If the date of priority is changed, the sixteen-month period shall be calculated from the changed date of priority.

(8) A priority claim shall not be filed or amended if the patent application has been published pursuant to subsection 24 (2) of this Act or technical preparations for the publication of the patent application have been completed.

[RT I 2003, 18, 106 – entry into force 01.04.2003]

## **§ 21. Establishment and change of filing date of patent application**

[RT I 2003, 18, 106 – entry into force 01.04.2003]

(1) The Patent Office shall establish as the filing date of a patent application the date on which at least the following elements of the patent application are included in a set of documents received by the Patent Office:

[RT I 2003, 18, 106 – entry into force 01.04.2003]

1) a request for the grant of a patent in Estonian or another express indication to the effect that the documents are intended to constitute a patent application;

[RT I 2003, 18, 106 – entry into force 01.04.2003]

2) the name and address of the applicant or data allowing the applicant to be contacted by the Patent Office;

[RT I 2009, 4, 24 – entry into force 01.03.2009]

3) a document which on the face of it appears to be a description of the invention.

[RT I 2003, 18, 106 – entry into force 01.04.2003]

(2) Instead of the document referred to in clause (1) 3) of this section, the following information concerning the first patent application or registration application of a utility model with regard to the same invention may be submitted:

1) number;

2) filing date;

3) the state or international organisation where the first patent application or registration application of a utility model was filed. If the first patent application or registration application of a utility model is in a foreign language, the applicant shall submit the Estonian translation of the description of the invention and patent claims within the term set by the Patent Office but not later than within sixteen months from the filing date of the first patent application or registration application of a utility model.

[RT I 2003, 18, 106 – entry into force 01.04.2003]

(3) The Patent Office shall establish the filing date of a patent application separated pursuant to subsection 9 (2) or (3) of this Act as the filing date of the earlier patent application provided that the separated patent application is filed within the term specified in subsection 9 (2) and the set of documents received contains at least the elements of a patent application as listed in subsection (1) of this section.

[RT I 2003, 18, 106 – entry into force 01.04.2003]

(4) Where, upon review of the documents received, the Patent Office finds that an element of the patent application listed in subsection (1) of this section is missing from the set of documents, the Patent Office shall notify the person who filed the patent application accordingly. The missing elements shall be submitted within two months from the date of the notice of the Patent Office.

[RT I 2009, 4, 24 – entry into force 01.03.2009]

(5) The Patent Office is not required to give notice of deficiencies as specified in subsection (4) of this section if the missing element of the patent application is the information referred to in clause (1) 2) of this section. In such case, the applicant shall submit all the missing elements of the patent application as specified in subsection (1) on the applicant's own initiative within two months from the date on which the initially submitted documents were received by the Patent Office.

[RT I 2003, 18, 106 – entry into force 01.04.2003]

(6) In the case specified in subsection (4) of this section, the Patent Office shall establish as the filing date of the patent application the date on which the applicant has eliminated all the deficiencies in the initially submitted documents as listed in the notice sent by the Patent Office and, in the case specified in subsection (5) of this section, the date on which the applicant submitted all the missing elements of the patent application as listed in subsection (1) on the applicant's own initiative.

[RT I 2003, 18, 106 – entry into force 01.04.2003]

(7) Where the Patent Office finds that a part of the description of the invention appears to be missing from the patent application documents, or that the description of the invention or patent claims refer to a drawing which appears to be missing from the patent application documents (hereinafter missing part), the Patent Office shall promptly notify the applicant thereof. If the applicant wishes to add the missing part to the patent application, the applicant, whether notified by the Patent Office or not, shall file the missing part within two months from the filing date of the patent application. The Patent Office shall establish the date on which the missing part is received by the Patent Office as the new filing date of the patent application.

[RT I 2003, 18, 106 – entry into force 01.04.2003]

(8) If, within the term specified in subsection (7) of this section, the applicant gives notice to the Patent Office of declining to file the missing part or fails to file the missing part, the Patent Office shall establish the filing date of the patent application pursuant to the provisions of subsection (1) of this section.

[RT I 2003, 18, 106 – entry into force 01.04.2003]

(9) Within the two-month term specified in subsection (7) of this section, the applicant may request that a missing part be replaced by the full text of the description of the invention of the first patent application or registration application of a utility model with regard to the same invention or that a drawing be replaced by a drawing of the said first application. The request shall contain the information specified in subsection (2) on the first patent application or registration application of a utility model. If the first patent application or registration application of a utility model is in a foreign language, the applicant shall submit the Estonian translation of the full text of the description of the invention or drawing to the Patent Office within sixteen months from the date of priority. In the case of such request, the Patent Office shall establish the date of receipt of the initially submitted documents at the Patent Office as the filing date of the patent application.  
[RT I 2003, 18, 106 – entry into force 01.04.2003]

(10) Where both the provisions of subsection (6) and subsection (7) or (9) of this section apply to the establishment of the filing date of a patent application, the filing date of the patent application shall be the later date as established pursuant to the said provisions.  
[RT I 2003, 18, 106 – entry into force 01.04.2003]

(11) The Patent Office shall not establish the filing date of a patent application if the applicant fails:  
1) in the case specified in subsection (4) of this section, to eliminate any deficiencies listed in the notice of the Patent Office within two months from the date of the notice of the Patent Office;  
[RT I 2009, 4, 24 – entry into force 01.03.2009]  
2) in the case specified in subsection (5) of this section, to file, on own initiative, all the elements of the patent application referred to in subsection (1) of this section that are missing within two months from the date of receipt of the initially submitted documents at the Patent Office.  
[RT I 2003, 18, 106 – entry into force 01.04.2003]

## **§ 21<sup>1</sup>. [Repealed - RT I 2004, 20, 141 – entry into force 01.05.2004]**

## **§ 22. Acceptance of patent applications for processing and preliminary processing of patent applications**

(1) The Patent Office shall accept a patent application for processing if the filing date of the patent application has been established pursuant to the provisions of § 21 of this Act.

(2) The Patent Office shall notify the applicant of the number and filing date of the patent application accepted for processing.

(3) The Patent Office shall refuse to accept a patent application for processing if the filing date of the patent application is not established on the bases prescribed in subsection 21 (11) of this Act.

(4) Upon refusal to accept a patent application for processing, the applicant is notified thereof in writing. The applicant is entitled to the refund of the state fee paid by the applicant.  
[RT I 2004, 20, 141 – entry into force 01.05.2004]

(5) In the course of preliminary processing, the Patent Office shall verify the following:  
1) payment of the state fees specified in subsections 20 (2) and (3) of this Act;  
2) existence of the documents specified in subsections 19 (1) and (2) of this Act;  
3) existence of the translation specified in subsection 21 (2) or (9) of this Act, if said provisions apply;  
4) compliance of the priority claim with the provisions of §§ 11 and 20<sup>1</sup> of this Act, if priority is claimed;  
5) information on the author and compliance with the requirement to declare the legal basis of the right to apply for the patent referred to in subsection 19 (3) of this Act if the applicant is not the author;  
6) the right of a patent attorney to operate in the area of inventions, if the patent application is filed via the patent attorney;  
7) compliance of the patent application documents with the requirements relating to form and contents established on the basis of subsection 19 (4) of this Act.

(5<sup>1</sup>) If an application for classifying a patent application has not been annexed to the application but based on the information forwarded by the Ministry of Defence the patent application may, in the opinion of the Patent Office, concern an invention relating to national defence which is subject to classification, the Patent Office shall submit an inquiry to the Ministry of Defence in order to decide whether the patent application shall be classified. If a decision concerning classification of the patent application is not forwarded to the Patent Office within four months from the inquiry, it implies that the patent application need not be classified.  
[RT I 2009, 4, 24 – entry into force 01.03.2009]

(6) If the state fee prescribed in subsection 20 (2) of this Act is not paid in the prescribed amount within two months from the filing date of the patent application, the Patent Office shall reject the patent application. If patent claims are missing or are not in compliance with the requirements relating to form and contents or the supplementary state fee provided for in subsection 20 (3) is paid in an amount less than the prescribed amount, the Patent Office shall set a due date for payment of the missing part of the state fee.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

(7) If, upon verification specified in subsection (5) of this section, it is ascertained that a document is missing from the patent application or deficiencies relating to the contents or form of the documents exist which hinder the publication of the patent application or commencement of examination, or the contents of a document are insufficient or ambiguous, or other circumstances which hinder the examination become evident, the Patent Office shall notify the applicant thereof in writing and set a due date for elimination of the deficiencies or provision of explanations or for filing of an objection pursuant to § 29<sup>1</sup> of this Act.

[RT I 2009, 4, 24 – entry into force 01.03.2009]

(8) The Patent Office shall commence examination of a patent application if no circumstances hindering the publication of the patent application or commencement of examination have been ascertained as a result of the verification provided for in subsection (5) of this section or such circumstances have been eliminated by the due date prescribed in the case provided for in subsection (7) of this section.

(9) The Patent Office shall make a decision to reject a patent application if circumstances hindering the publication of the patent application or commencement of the examination have not been eliminated by the due date prescribed in the case provided for in subsection (7) of this section and a written objection has not been filed by the due date established by the Patent Office in the case specified in § 29<sup>1</sup> of this Act or an oral procedure has not been requested pursuant to subsection 29<sup>2</sup>(2) of this Act or the Patent Office has not agreed with the objection. The Patent Office shall notify an applicant in writing of a decision to reject the patent application.

[RT I 2009, 4, 24 – entry into force 01.03.2009]

### **§ 23. Examination of patent applications**

[RT I 2003, 18, 106 – entry into force 01.04.2003]

(1) During an examination, the Patent Office shall verify the compliance of an invention with the criteria of patentability provided for in § 8 of this Act.

[RT I 2003, 18, 106 – entry into force 01.04.2003]

(2) The Patent Office may request an applicant to provide oral or written explanations and correction or supplementation of patent claims, description of the invention, drawings and abstract of the subject matter of the invention or translations of foreign language documents submitted by the applicant. The Patent Office shall set a due date for the provision of explanations or submission of corrections, supplements and translations or filing of an objection pursuant to § 29<sup>1</sup> of this Act.

[RT I 2009, 4, 24 – entry into force 01.03.2009]

(3) The Patent Office has the right to request an applicant to submit copies of decisions of patent offices of other countries regarding the applicant's analogous patent applications and to exchange information regarding the patent application with patent offices of other countries.

[RT I 2003, 18, 106 – entry into force 01.04.2003]

(4) If the Patent Office finds that the subject of the invention can be protected by a patent pursuant to the provisions of §§ 6 and 7 of this Act and the subject matter of the invention as expressed in the patent claims complies, when compared to the state of the art, with the criteria of patentability established in § 8 of this Act and that the form and contents of the patent application documents comply with the requirements relating to form and contents established on the basis of subsection 19 (4) of this Act, the Patent Office shall terminate the examination of the patent application, make a decision to grant the patent and notify the applicant thereof in writing.

[RT I 2003, 18, 106 – entry into force 01.04.2003]

(5) The Patent Office shall make a decision to reject the patent application and shall notify the applicant thereof in writing in the following cases:

- 1) the subject of the invention cannot be protected by a patent pursuant to the provisions of §§ 6 and 7 of this Act;
- 2) the subject matter of the invention as expressed in the patent claims does not comply, when compared to the state of the art, with the criteria of patentability established in § 8 of this Act;
- 3) the applicant fails to separate an invention which violates the requirement of unity from the patent application by the due date set pursuant to subsection 9 (3) of this Act;
- 4) the contents or form of the patent application documents do not comply with the requirements relating to contents and form established on the basis of subsection 19 (4) of this Act;
- 5) the applicant fails to make the corrections or supplements or provide the explanations or submit the translations requested pursuant to subsection (2) or to submit the copies of decisions requested pursuant to subsection (3) of this section;
- 6) the applicant has not filed an objection within the term set by the Patent Office in the case specified in §-s 29<sup>1</sup> of this Act;
- 7) the applicant has not requested an oral procedure or
- 8) the Patent Office has not agreed with the objection.

[RT I 2009, 4, 24 – entry into force 01.03.2009]

(6) Any observations and opinions on a patent application submitted by a third person in the course of examination shall be communicated to the applicant who may comment on them. Third persons shall not be involved in processing.

[RT I 2003, 18, 106 – entry into force 01.04.2003]

#### **§ 24. Publication of patent applications**

(1) For the purposes of this Act, “publication of a patent application” means the publication of patent application documents specified in clauses 19 (1) 2)-5).

(2) The Patent Office shall publish a patent application not earlier than eighteen months after the filing date or, if priority is claimed, the date of priority of the patent application.

(2<sup>1</sup>) In determining the novelty and inventive step, a classified patent application is deemed to be published not earlier than eighteen months after the filing date or, if priority is claimed, the date of priority of the patent application unless the patent application is withdrawn, deemed to be withdrawn or rejected before the said date.

[RT I 2009, 4, 24 – entry into force 01.03.2009]

(3) At the request of the applicant, a patent application shall be published before expiry of the term specified in subsection (2) of this section.

(4) A patent application shall not be published if:

- 1) the patent application is withdrawn or deemed to be withdrawn;
- 2) the patent application is rejected;
- 3) the publication of the patent application is hindered due to deficiencies in the form or contents of patent application documents;
- 4) the patent application is classified.

[RT I 2009, 4, 24 – entry into force 01.03.2009]

(5) An applicant is notified of the publication of the patent application in writing.

(6) Notices of publication of patent applications are published in the official gazette of the Patent Office.

(7) The publication date of the notice specified in subsection (6) of this section is deemed to be the publication date of the patent application.

(8) The procedure for the publication of patent applications shall be established by the minister responsible for the area. For the publication of a patent application, a period of technical preparations of up to one month may be established and, during that period, no corrections or supplements shall be made to the patent application, the patent application shall not be withdrawn and acts related to the transfer of rights shall be suspended.

[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

#### **§ 25. Correction and supplementation of patent application**

(1) An applicant may correct and supplement a patent application during processing such that no alterations are made to the subject matter of the invention which was disclosed in the patent application on the filing date of the patent application.

(2) Corrections and supplements are deemed to alter the subject matter of an invention if they contain essential features of the invention which were not included in the patent claims, description of the invention, drawings or other illustrative material on the filing date of the patent application.

[RT I 2009, 4, 24 – entry into force 01.03.2009]

(3) In the case of corrections and supplements which alter the subject matter of an invention, the Patent Office shall make a decision to reject such supplements and shall notify the applicant thereof in writing.

(4) After the publication of a patent application pursuant to § 24 of this Act, the applicant shall not make such corrections or supplements which extend the scope of patent protection.

(5) After the Patent Office has made a decision pursuant to subsection 23 (4) or (5) of this Act, the applicant may correct and supplement the patent application once within two months from the date of the decision and shall pay a state fee therefor. The state fee shall not be paid if obvious spelling or calculation errors are corrected. The Patent Office has the right to make a new decision on the basis of the corrections and supplements submitted.

(6) During processing, the Patent Office may, without obtaining the approval of the applicant, correct obvious errors, delete unnecessary data and edit the documents of a patent application, except in a description of an

invention, patents claims and drawings. The abstract of the subject matter of an invention may be amended without obtaining the approval of the applicant.  
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

### **§ 25<sup>1</sup>. Establishing and extension of time limits**

(1) In the cases provided for in this Act, the Patent Office may establish time limits from two to four months. In exceptional cases the Patent Office may establish a time limit of six months.

(2) In justified cases, an applicant has the right to request the extension of a term set by the Patent Office within the time limits provided for in subsection (1) of this section. The application for an extension of the term shall be filed with the Patent Office before expiry of the due date. The decision of the Patent Office regarding an extension of a term is final.  
[RT I 2004, 20, 141 – entry into force 01.05.2004]

### **§ 26. Withdrawal of patent applications**

(1) An applicant may file a request for withdrawal of a patent application and may withdraw a patent application which is being processed. The date of receipt of the request for withdrawal of a patent application by the Patent Office shall be the date of withdrawal of the patent application. Patent application documents shall not be returned.  
[RT I 2009, 4, 24 – entry into force 01.03.2009]

(2) If several persons apply for a patent, a request for withdrawal of the patent application shall be filed with the consent of all such persons.

(3) The Patent Office deems a patent application to be withdrawn:

- 1) if the applicant fails to comply, by the specified due date, with a request to eliminate deficiencies or provide explanations submitted by the Patent Office in the course of preliminary processing pursuant to subsection 22 (7) or fails, without good reason, to appear to the oral procedure provided for in § 29<sup>2</sup> at an agreed time or fails to submit a request for resumption of processing of the patent application pursuant to subsection 27 (3) of this Act;
- 2) if the applicant fails to comply, by the specified due date, with a request to provide explanations or submit any corrections, supplements or translations made by the Patent Office in the course of examination pursuant to subsection 23 (2) or fails, without good reason, to appear to the oral procedure provided for in § 29<sup>2</sup> at an agreed time or fails to submit a request for resumption of processing of the patent application pursuant to subsection 27 (3) of this Act;
- 3) if the applicant fails to pay a state fee on time or the data concerning the paid state fee are not submitted within the prescribed term;
- 4) [Repealed - RT I, 29.11.2011, 1 – entry into force 01.01.2012];
- 5) if a registration application of a utility model has been filed on the basis of the patent application pursuant to § 19 of the Utility Models Act.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

### **§ 27. Suspension and resumption of processing of patent application**

(1) Where an applicant fails to comply with a time limit established by the Patent Office pursuant to this Act, for the performance of an act, the Patent Office shall suspend the processing of the patent application and notify the applicant thereof in writing. The processing of the patent application shall not be suspended if the applicant fails to adhere to the due date established for the submission of an objection pursuant to subsection 22 (7) or 23 (2) of this Act.  
[RT I 2009, 4, 24 – entry into force 01.03.2009]

(2) If an action is filed on the basis of subsection 48 (1) or 49 (1) of this Act, processing of the patent application shall be suspended until entry into force of a court judgment.

(3) The processing of a patent application suspended pursuant to subsection (1) of this section shall be resumed if the applicant files a request for resumption of processing of the patent application, proves that the time limit was ignored unintentionally, performs the prescribed act and pays the state fee within two months from the date on which notice was given of the suspension of processing of the patent application or, if notice of suspension was not received, within six months from the due date for the act which was not performed.

(4) Suspension of the processing of a patent application does not grant the right to postpone or restore terms for the payment of the state fee for a year of validity provided for in § 42 of this Act if the state fee was not paid by the due date.  
[RT I 2003, 18, 106 – entry into force 01.04.2003]

### **§ 28. Termination of processing of patent application**

(1) The Patent Office shall terminate the processing of a patent application which is withdrawn or deemed to be withdrawn.

(2) The applicant shall be notified of the termination of the processing of a patent application in writing.

### **§ 29. Resumption of processing of patent application**

(1) An applicant may request resumption of the processing of a patent application if the Patent Office has terminated the processing of the patent application by having deemed the patent application to be withdrawn pursuant to clause 26 (3) 1), 2) or 3) of this Act, provided that the failure to perform the acts specified in such provisions occurred due to *force majeure* or some other impediment beyond the control of the applicant or the patent attorney representing the applicant.

(2) The Patent Office shall resume the processing of a patent application if the applicant files a request for the resumption of processing, proves the existence of an impediment and performs the prescribed acts within two months after the impediment ceases to exist, and pays a state fee.

(3) A request for resumption of the processing of a patent application may be filed within one year from the due date for the act which was not performed.

(4) The provisions of subsections (1) - (3) of this section do not apply to the terms specified in subsections 9 (2), 21 (2), (7) and (9) and 33 (3) of this Act.

[RT I 2009, 4, 24 – entry into force 01.03.2009]

### **§ 29<sup>1</sup>. Applicant's right to file objections**

If the Patent Office finds that facts which have become evident in the course of preliminary processing or examination of a patent application will, pursuant to the provisions of this Act, result in the rejection of the patent application, the Patent Office shall, before making a decision to reject the patent application, notify the applicant of the intended decision and facts leading thereto and give the applicant at least one opportunity to file oral or written objections.

[RT I 2003, 18, 106 – entry into force 01.04.2003]

### **§ 29<sup>2</sup>. Oral procedure**

(1) The Patent Office may summon the applicant to the Patent Office for an oral procedure to provide explanations concerning a patent application or to resolve issues relating to the processing thereof.

(2) An applicant may request an oral procedure in order to submit an oral objection set out in § 29<sup>1</sup> of this Act.

(3) An oral procedure shall be conducted at an agreed time.

(4) The Patent Office or an applicant have no right to request that an oral procedure be conducted earlier than two months before or later than six months after the date of issue of the summons by the Patent Office or the date of receipt of the request of the applicant by the Patent Office.

(5) Minutes shall be taken of an oral procedure which shall set out at least:

- 1) the patent application number;
- 2) the date of the oral procedure;
- 3) the names and official titles of the persons who participated in the oral procedure;
- 4) the objective of the oral procedure;
- 5) a short summary of the process of the oral procedure;
- 6) an agreement reached or dissenting opinions of the parties;
- 7) signatures of the persons who participated in the procedure.

[RT I 2009, 4, 24 – entry into force 01.03.2009]

### **§ 30. Filing appeals against decisions of Patent Office**

(1) An applicant may file an appeal against a decision of the Patent Office with the Board of Appeal.  
[RT I 2008, 59, 330 – entry into force 01.01.2009]

(2) An applicant may file an appeal with the Board of Appeal within two months from the date on which the decision is made, and shall pay a state fee.

(3) The Board of Appeal has the right, by a decision, to:

- 1) dismiss an appeal, or
- 2) require the Patent Office to annul its decision and continue the processing taking into account the circumstances set forth in the decision of the Board of Appeal.

(4) The state fee is refunded upon grant of appeal.

(5) If an appeal is partially granted, the Board of Appeal shall determine the amount of the state fee to be refunded.

[RT I 2005, 39, 308 – entry into force 01.01.2006]

### **§ 31. Completion of processing of patent application**

The processing of a patent application is completed by grant of a patent or by rejection of the patent application.

## **Chapter VI INTERNATIONAL APPLICATION**

### **§ 32. Definition of international application**

(1) For the purposes of this Act, “international application” is an international application filed on the basis of the Patent Cooperation Treaty (RT II 1994, 6/7, 21) entered into on 19 June 1970 in Washington (hereinafter Patent Cooperation Treaty).

(2) Pursuant to the definition of Article 2 of the Patent Cooperation Treaty, the Patent Office is the receiving office, the designated office and the elected office.

(3) The Patent Office is the receiving office for international applications of Estonian citizens or of persons whose residence or seat is in the Republic of Estonia.

(4) An international application shall be prepared pursuant to the Patent Cooperation Treaty and the implementing regulations and administrative instructions thereof, and filed with the Patent Office, which is the receiving office, in English or German, and a state fee and fees prescribed by the Patent Cooperation Treaty shall be paid.

(5) The Patent Office is the designated or elected office for such international applications in which the Republic of Estonia is indicated as the designated or elected state.

(6) International applications in which the Republic of Estonia is indicated as the designated state are deemed equal to patent applications filed pursuant to §§ 19 and 20 of this Act.

(7) An international application in which the Republic of Estonia is indicated as the designated state is deemed to be filed with the Patent Office on the international filing date which is determined by the receiving office, as specified in the Patent Cooperation Treaty.

(7<sup>1</sup>) An invention described in a published international application in which the Republic of Estonia is indicated as the designated state shall be granted provisional protection pursuant to § 18 of this Act as of the date on which the Patent Office publishes the Estonian translation of the international application filed in accordance with subsection 33 (1) of this section or, if the applicant makes a request for provisional protection to take effect earlier, the date on which the applicant forwards the Estonian translation of the patent claims of the published international application to a person using the invention in the Republic of Estonia or the date on which the Patent Office publishes the said translation, if the translation has been forwarded to the Patent Office and the state fee payable for the publication of the translation has been paid.

(8) The Patent Office shall examine such international applications in which the Republic of Estonia is indicated as the designated state.

(9) The procedure for payment of the fees prescribed by the Patent Cooperation Treaty shall be established by the minister responsible for the area.

[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

(10) The procedure for filing international applications with the Patent Office shall be established by the minister responsible for the area.

[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

### **§ 33. Specifications of processing of international applications**

(1) For an international application to be accepted for national processing, an applicant shall file a corresponding request together with the Estonian translation of the international application with the Patent Office and pay a state fee not later than within thirty-one months from the date of priority. In the case provided for in subsection 42 (9) of this Act, the applicant shall pay the state fees for the first, second and third years of validity within two months from the filing date of the said request.

(2) [Repealed - RT I 2003, 18, 106 – entry into force 01.04.2003]

(3) In justified cases, an applicant may be granted an additional period for filing the translation of an international application specified in subsection (1) of this section, but not more than until the end of the thirty-

third month as of the date of priority, and in case of several priorities, until the end of the thirty-third month as of the earliest date of priority. No additional period is granted if more than two months remain until the end of the thirty-one months' period specified in subsection (1) of this section. In case of submission of a translation or in case of expiry of the thirty-three months' period specified in this section, a supplementary state fee shall be paid.

(3<sup>1</sup>) An international application being processed nationally shall be published at the earliest opportunity but not before the application is published internationally pursuant to Article 21 of the Patent Cooperation Treaty, except in case twenty months have passed since the date of priority.

(3<sup>2</sup>) The procedure for accepting international applications for national processing and for publication of international applications shall be established by the minister responsible for the area.  
[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

(4) [Repealed - RT I 2003, 18, 106 – entry into force 01.04.2003]

(5) [Repealed - RT I 2003, 18, 106 – entry into force 01.04.2003]

(6) An international application shall lose the effect specified in subsections 32 (6) and (7) of this Act if:  
1) the provisions of Article 24 (1) (i) and (ii) of the Patent Cooperation Treaty apply;  
2) the applicant fails to comply with the requirements provided for in subsection (1) or (3) of this section;  
3) the applicant fails to comply with the requirements for the authorisation of a representative specified in § 13<sup>1</sup> of this Act.

(6<sup>1</sup>) An international patent application is rejected, if:  
1) the applicant has failed to observe the term specified in subsection (1) of this section or to pay a state fee in the prescribed amount;  
2) the applicant has failed to pay a state fee in the prescribed amount by the end of the additional period specified in subsection (3) of this section; or  
3) the applicant has failed to comply with the requirements for the procedure established on the basis of subsection (3<sup>2</sup>) of this section.

(7) The Patent Office has no right to request that an applicant file examination results of patent offices of the states designated in an international application if the applicant has chosen the Republic of Estonia to be the state using the results of the international preliminary examination.

(8) If international preliminary examination or international search is not performed with respect to a part of an international application on the grounds that the application is not in compliance with the requirement of unity of invention and the applicant has not paid the fee prescribed by the Patent Cooperation Treaty for additional international search or international preliminary examination, the Patent Office shall verify the correctness of the decision of the International Searching Authority or the International Preliminary Examining Authority not to perform international search or preliminary examination with respect to the part of the patent application. If the decision proves to be correct, such parts of the international application which are not in compliance with the requirement of unity of invention are deemed to be withdrawn. Otherwise, the Patent Office shall continue the processing of the international application in full. The Patent Office shall notify the applicant of its decision in writing.

(9) The Patent Office shall apply the provisions of subsection 9 (2) of this Act to such parts of an international application which violate the unity of the invention if the applicant files a corresponding request within two months from the date of the decision of the Patent Office specified in subsection (8) of this section.

(10) If the receiving office refuses to accept an international filing date or reports that an international application is deemed to be withdrawn, or if the International Bureau of the World Intellectual Property Organization (hereinafter International Bureau) has made a decision pursuant to Article 12 (3) of the Patent Cooperation Treaty, or if the receiving office reports that the designation of the Republic of Estonia is deemed to be withdrawn, the applicant may, within two months after receipt of the corresponding report or decision, request the review of the international application in the Republic of Estonia and request that the International Bureau send a copy of the international application to the Patent Office. The applicant shall file a translation of the international application and, in the cases prescribed, information concerning the patent attorney with the Patent Office, and pay a state fee within the term set by the Patent Office. The Patent Office shall verify the correctness of the decision of the receiving office or the International Bureau and notify the applicant of the results. If the decision of the receiving office or the International Bureau is incorrect, the application shall be reviewed as an international application.

(11) If the processing of an international application is terminated on the grounds that an applicant has failed to perform an act prescribed by the receiving office, the International Searching Authority, the International Preliminary Examining Authority or the International Bureau or an act provided for in subsection (1) of this section on time due to *force majeure* or some other impediment beyond the control of the applicant, the Patent

Office shall resume the processing of the international application in the Republic of Estonia, provided that the applicant adheres to the provisions of subsections 29 (2) and (3) of this Act.  
[RT I 2004, 20, 141 – entry into force 01.05.2004]

### **§ 33<sup>1</sup>. Files of international applications and processing of international applications, access to and release of information therefrom**

(1) The files of international applications and processing of international applications form a structured body of data concerning international application documents filed with the Patent Office as the receiving office pursuant to Article 2 of the Patent Cooperation Treaty and information on the processing thereof. Information on an international application and on the processing thereof is stored in the files until the processing file is closed.

(2) Access to the files of international applications and processing of international applications and release of information from the files prior to the publication of an international application pursuant to Article 21 of the Patent Cooperation Treaty is prohibited.

(3) After an international application is published pursuant to Article 21 of the Patent Cooperation Treaty, all persons may have access to the international application file.

(4) A fee is charged for release of information from the files of international applications and processing of international applications with the exception of the release of information to state agencies with supervisory authority or to a court. A state fee is charged for the release of information.

(5) The files of international applications and processing of international applications shall be established by the minister responsible for the area.  
[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

## **Chapter VII REGISTER OF PATENTS**

[RT I 2004, 20, 141 - entry into force 01.05.2004]

### **§ 34. Register of patents**

(1) The register of patents (hereinafter register) is maintained on the basis of this Act and the Principles of Legal Regulation of Industrial Property Act, and pursuant to the procedure provided for in these Acts.

(2) Notices concerning register entries are published in the official gazette of the Patent Office in cases provided for in the Acts specified in subsection (1) of this section. The Patent Office may, in the public interest and pursuant to the procedure established in the statutes of the official gazette of the Patent Office, publish notices concerning other register entries and other information in the official gazette of the Patent Office, the publication of which is not prohibited or restricted on the basis of these Acts or international agreements.

(3) The statutes of the official gazette of the Patent Office shall be approved by the minister responsible for the area. The title of the official gazette of the Patent Office is «Eesti Patendileht».  
[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

### **§ 35. Registration of invention in register**

[RT I 2004, 20, 141 – entry into force 01.05.2004]

(1) While a patent application is accepted for processing, the filing date and the number of the patent application and the receipt in the Patent Office of the documents submitted on the basis of § 19 of this Act and other documents submitted on the applicant's own initiative, and information contained in such documents pursuant to § 25 of the Principles of Legal Regulation of Industrial Property Act, shall be entered in the register.  
[RT I 2004, 20, 141 – entry into force 01.05.2004]

(2) In the course of processing a patent application, information and notices concerning the procedural acts performed pursuant to this Act, documents received and issued, time limits provided for in this Act and time limits established by the Patent Office shall be entered in the register.  
[RT I 2004, 20, 141 – entry into force 01.05.2004]

(3) Upon grant of patent protection for an invention, registration entry shall be made in the register.  
[RT I 2004, 20, 141 – entry into force 01.05.2004]

(4) A registration entry shall be made on the basis of a decision to grant the patent pursuant to subsection 23 (4) of this Act, if the applicant pays the state fee within three months from the date on which the corresponding decision was made. If the state fee is not paid in the prescribed amount within the specified term, the patent application is deemed to be withdrawn.  
[RT I 2009, 4, 24 – entry into force 01.03.2009]

(5) Registration data are:

- 1) the registration number;
- 2) the registration date;
- 3) the name of the invention;
- 4) the index of the international patent classification;
- 5) the given name, surname and address of the author of the invention;
- 6) the given name and surname of the proprietor of the patent and the address and country code of his or her residence or seat of his or her enterprise, in the case of a legal person, the name, address of the seat and the country code;
- 7) the date of beginning of the term of validity of the patent;
- 8) the date of expiry of the term of validity of the patent;
- 9) in the case of a patent attorney, the given name and surname of the patent attorney;
- 10) in the case of a joint representative, the given name and surname of the joint representative, in the case of a joint representative who is a legal person, the name of the legal person;
- 11) the patent application number;
- 12) the filing date of the patent application;
- 13) priority data (date of priority, country, application number);
- 14) the number and filing date of an earlier patent application from which the patent application is separated;
- 15) number and filing date of an earlier, continued patent application;
- 16) the filing date of corrections and supplements to an earlier patent application which alter the subject matter of the invention;
- 17) international application or European patent application data;
- 18) the publication date of the patent application;
- 19) the date of disclosure of information specified in subsection 8 (3) of this Act;
- 20) data concerning the deposit of biotechnological material, including micro-organism strain;
- 21) data concerning payment of state fee in respect of the year of maintenance of the patent application;
- 22) patent claims;
- 23) the description of the invention;
- 24) drawings or other illustrative material;
- 25) data concerning supplementary protection of a medicinal product;
- 26) data concerning supplementary protection of a plant protection product.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

(6) The applicant specified in subsection (4) of this section is entered in the register as the proprietor of the patent.  
[RT I 2004, 20, 141 – entry into force 01.05.2004]

(7) Registrations are numbered in the order in which the inventions are registered starting from number 02932 as a continuation of the registry numeration which was discontinued in 1940.  
[RT I 2004, 20, 141 – entry into force 01.05.2004]

(8) Upon registration of an invention in the register, the Patent Office publishes a notice of grant of a patent and the patent specifications in its official gazette unless the patent application is classified. The publication date of the notice shall be entered in the register.  
[RT I 2009, 4, 24 – entry into force 01.03.2009]

(9) Registration shall take effect on the publication date of a notice of grant of a patent in the official gazette of the Patent Office.  
[RT I 2004, 20, 141 – entry into force 01.05.2004]

### **§ 35<sup>1</sup>. Access to and release of data from register**

[RT I 2004, 20, 141 – entry into force 01.05.2004]

(1) The register is public. Everyone has the right to examine the registry file concerning of a patent application published pursuant to § 24 of this Act and data entered in the database record, taking account of the restrictions provided for in the said section and the author's right to prohibit the disclosure of the author's name.  
[RT I 2004, 20, 141 – entry into force 01.05.2004]

(2) No information is released from the register concerning business secrets defined as confidential or information on know-how or information concerning classified patent applications.  
[RT I 2009, 4, 24 – entry into force 01.03.2009]

(3) In order to have access to a registry file or receive copies or printouts from the register, a written request together with information concerning payment of the state fee for each file, copy or printout of a document shall be submitted. Applicants, proprietors of patents and authors have access to the registry files concerning their inventions free of charge. Other persons have also access to the registry files free of charge if authorisation has been granted by the aforesaid persons.

[RT I 2009, 4, 24 – entry into force 01.03.2009]

(4) At the written request of the applicant or proprietor of a patent and in case of payment of the state fee, the Patent Office issues a document certifying priority of the invention consisting of a copy of the patent application and the official confirmation by the Patent Office. The requirements for the format and procedure for completion of the documents certifying priority shall be established by the minister responsible for the area.

[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

(5) The procedure for access to the register and release of information from the register shall be established by the minister responsible for the area.

[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

**§ 35<sup>2</sup>. [Repealed - RT I 2004, 20, 141 – entry into force 01.05.2004]**

**§ 35<sup>3</sup>. [Repealed - RT I 2004, 20, 141 – entry into force 01.05.2004]**

#### **§ 35<sup>4</sup>. Patent specification**

(1) A patent specification contains the description of the invention, patent claims, drawings or other illustrative material, an abstract of the subject matter of the invention and the following information:

- 1) the name of the agency which issued the patent specification;
- 2) the name and number of the document;
- 3) the name of the invention;
- 4) the index of the international patent classification;
- 5) the given name, surname and address of the author of the invention;
- 6) the given name and surname of the proprietor of the patent and the address and country code of his or her residence or seat of his or her enterprise, in the case of a legal person, the name, address of the seat and the country code;
- 7) in the case of a patent attorney, given name, surname and address of the patent attorney;
- 8) in the case of a joint representative, the given name and surname of the joint representative, in the case of a joint representative who is a legal person, the name of the legal person;
- 9) the number and filing date of the patent application;
- 10) priority data;
- 11) international application or European patent application data;
- 12) data concerning the deposit of biological material, including micro-organism strain;
- 13) the publication date of the patent application;
- 14) the publication date of the patent specification;
- 15) the date of beginning of the term of validity of the patent.

(2) After the entry of registration data in the register, the Patent Office prepares a patent specification.

(3) A patent specification shall be kept in the registry file.

(4) A patent specification shall be published on the publication date of the notice of the grant of the patent.

(5) Requirements for the format and procedure for the completion of patent specifications shall be established by the minister responsible for the area.

[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

#### **§ 36. Letters patent**

(1) The letters patent is a document which certifies the registration of an invention in the register.

(2) A letters patent consists of a certificate and patent specification.

(3) A certificate contains the following:

- 1) the name of the country – the Republic of Estonia;
- 2) the coat of arms of the country – small national coat of arms of Estonia;
- 3) the number of the letters patent;
- 4) the text “The patent is granted on the basis of § 5 of the Patents Act which entered into force on 23 May 1994. A patent shall be valid for twenty years as of the filing date of the patent application. For maintaining a patent, a state fee shall be paid for each year of validity of the patent. The letters patent certifies the registration and the exclusive right of the proprietor of the patent to the invention set out in the patent specification.”;
- 5) information on the issuing agency (name and location of the agency, title, name and signature of the head of the agency, seal of the agency);
- 6) the date of signing the letters patent.

(4) The date on which a letters patent is signed by the head of the agency which issues the document is deemed to be the date of issue of the letters patent. The date of issue of a letters patent is entered in the registry database.

(5) The registration number is also the number of the letters patent. The registration number and the number of letters patent are deemed to be the patent number.

(6) The Patent Office shall issue a letters patent to the proprietor of the patent within one month from the publication date of the notice of grant of the patent.

(7) Only one letters patent is issued regardless of the number of proprietors of the patent.

(8) A duplicate of a letters patent may be issued on the basis of a request from the proprietor of the patent. A duplicate shall be issued within one month from the date of receipt of the request and information concerning payment of the state fee at the Patent Office. A notice of the issue of a duplicate is published in the official gazette of the Patent Office.

(9) The requirements for the format and procedure for the completion and issue of letters patents shall be established by the minister responsible for the area.  
[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

## **Chapter VII<sup>1</sup>**

### **REGISTER OF EUROPEAN PATENTS VALID IN ESTONIA**

[RT I 2004, 20, 141 - entry into force 01.05.2004]

#### **§ 36<sup>1</sup>. Register of European patents valid in Estonia**

(1) The register of European patents valid in Estonia is maintained on the basis of and pursuant to the procedure specified in this Act, the Implementation of Convention on Grant of European Patents Act (RT I 2002, 38, 233; 2003, 88, 594) and the Principles of Legal Regulation of Industrial Property Act.

(2) Notices concerning register entries are published in the official gazette of the Patent Office in the cases provided for in the Acts specified in subsection (1) of this section.  
[RT I 2004, 20, 141 – entry into force 01.05.2004]

#### **§ 36<sup>2</sup>. Entry of European patents in register of European patents valid in Estonia**

(1) A European patent in which the Republic of Estonia is indicated as the designated state is entered in the register of European patents valid in Estonia upon compliance with the conditions provided for in subsection 7 (1) of the Implementation of Convention on Grant of European Patents Act and pursuant to the procedure established on the basis of clause 20 (1) 2) of the same Act.

(2) Registrations are numbered in the order in which the European patents are registered. The format of the registration number shall be E000000, where the part of the number in six digits from number «1» corresponds to the consecutive number of the registration. The provisions of the Convention on the Grant of European Patents (hereinafter European Patent Convention) (RT II 2002, 10, 40) apply in respect of the rest of the registration data and procedure of making registration entries.  
[RT I 2004, 20, 141 – entry into force 01.05.2004]

#### **§ 36<sup>3</sup>. Application of provisions regulating maintenance of register of patents to register of European patents valid in Estonia**

The corresponding provisions of the register of patents apply to entries specified in clauses 17 2)-7) of the Implementation of Convention on Grant of European Patents Act. In the case of a discrepancy between the provisions of the Implementation of Convention on Grant of European Patents Act and the provisions of the European Patent Convention, the provisions of the European Patent Convention shall prevail.  
[RT I 2004, 20, 141 – entry into force 01.05.2004]

## **Chapter VIII**

### **VALIDITY OF PATENTS**

#### **§ 37. Term of validity of patents**

(1) A patent shall be valid for twenty years as of the filing date of the patent application.

(2) To maintain a patent application and patent, a state fee shall be paid for each year of validity. The filing date of a patent application is deemed to be the date of the beginning of a year of validity.  
[RT I 2004, 20, 141 – entry into force 01.05.2004]

### **§ 38. Premature termination of validity of patent**

(1) A patent becomes prematurely invalid if:

- 1) a state fee is not paid for the year of validity;
- 2) the proprietor of the patent files a request for termination of the validity of the patent;
- 3) a legal person which is the proprietor of a patent is liquidated, or its activities are terminated and the patent rights have not been transferred.

(2) The Patent Office shall make an entry in the register concerning the premature termination of the validity of a patent and shall publish a notice thereof in the official gazette of the Patent Office.

### **§ 39. Amendments to patents**

(1) The proprietor of a patent may restrict the scope of patent protection by amending patent claims and correct any bibliographical data and obvious spelling or calculation errors in the patent specification during the entire term of validity of the patent. A request for making amendments and new patent claims and, if necessary, a new description of the invention shall be filed with the Patent Office and a state fee prescribed by subsection (4<sup>1</sup>) of this section shall be paid. The Patent Office shall, on its own initiative or upon request of the proprietor of a patent, correct its own mistakes without charge.

(2) The proprietor of a patent may request the making of such amendments to the patent which do not alter the subject matter of the invention which was disclosed in the patent application on the filing date of the patent application.

(3) Amendments have retroactive effect.

(4) The Patent Office shall publish a notice of making amendments to a patent in the official gazette of the Patent Office. If patent claims are amended, also the new patent specification shall be published.

(4<sup>1</sup>) In case a request is made to amend a patent, a state fee shall be paid for the publication of a notice concerning the amendment of the patent specification if bibliographical data and spelling or calculation errors are corrected, and a state fee shall be paid for the publication of a notice concerning the amendment of patent claims and publication of a new patent specification if the scope of patent protection is restricted.

(5) During proceedings relating to the contestation of a patent in the Board of Appeal or a court, the proprietor of the patent cannot file a request for making amendments to the patent with the Patent Office.

(6) The proprietor of a patent may file a request with the Patent Office for making amendments to correct obvious spelling or calculation errors which restrict the scope of patent protection within two years after the publication of the notice of grant of the patent.

(7) The extension of the scope of patent protection provided for in subsection (6) of this section shall not restrict the rights of persons who had, prior to the publication of the notice concerning the making of amendments, taken into consideration the initial scope of patent protection in their economic or professional activities.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

## **Chapter VIII<sup>1</sup>**

# **SUPPLEMENTARY PROTECTION OF MEDICINAL PRODUCTS AND PLANT PROTECTION PRODUCTS**

[RT I 2004, 20, 141 - entry into force 01.05.2004]

### **§ 39<sup>1</sup>. Legislation providing supplementary protection of medicinal products and plant protection products**

[RT I 2004, 20, 141 – entry into force 01.05.2004]

Supplementary protection of medicinal products and plant protection products (hereinafter supplementary protection) is established in Council Regulation (EEC) No 1768/92 concerning the creation of a supplementary protection certificate for medicinal products (OJ L 182, 02.07.1992, pp. 1–5), Regulation (EC) No 1901/2006 of the European Parliament and of the Council on medicinal products for paediatric use and amending Regulation (EEC) No 1768/92, Directive 2001/20/EC, Directive 2001/83/EC and Regulation (EC) No 726/2004 (OJ L 378, 27.12.2006, pp. 1–19); Regulation (EC) No 1610/96 of the European Parliament and of the Council concerning the creation of a supplementary protection certificate for plant protection products (OJ L 198, 08.08.1996, pp. 30–35) (hereinafter Regulations on supplementary protection) and in this Act.

[RT I 2009, 4, 24 – entry into force 01.03.2009]

### **§ 39<sup>2</sup>. Filing of supplementary protection applications**

[RT I 2004, 20, 141 – entry into force 01.05.2004]

(1) Supplementary protection applications are filed with the Patent Office.  
[RT I 2004, 20, 141 – entry into force 01.05.2004]

(2) A state fee shall be paid for filing a supplementary protection application within two months from the filing date of the supplementary protection application. The term for payment of the said state fee cannot be extended.  
[RT I 2009, 4, 24 – entry into force 01.03.2009]

(2<sup>1</sup>) A state fee shall be paid for filing an application for extension of supplementary protection for medicinal products for paediatric use pursuant to Article 36 of Regulation (EC) No 1901/2006 of the European Parliament and of the Council within two months from the filing date of the application for extension of supplementary protection.  
[RT I 2009, 4, 24 – entry into force 01.03.2009]

(3) The requirements for the format of supplementary protection application documents and the procedure for filing thereof shall be established by the minister responsible for the area.  
[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

### **§ 39<sup>3</sup>. Processing of supplementary protection applications**

(1) The Patent Office shall verify the compliance of a supplementary protection application with the provisions of a corresponding Regulation on supplementary protection, the requirements for the format of supplementary protection application documents established by the minister responsible for the area and the term for payment of the state fee.  
[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

(2) The Patent Office does not verify whether the medicinal product or plant protection product is registered for the first time or whether the same medicinal product or plant protection product has been granted supplementary protection before.

(3) If there are deficiencies in supplementary protection application documents, the Patent Office shall set a term of two to four months, or in exceptional cases up to six months, for elimination of deficiencies or provision of explanations. The provisions of § 27 of this Act apply to suspension and resumption of the processing of supplementary protection applications.

(4) If a supplementary protection application is in compliance with the requirements, the Patent Office shall make a decision to grant supplementary protection and shall notify the applicant for supplementary protection thereof in writing.

(5) If a supplementary protection application is not in compliance with the requirements, or the state fee has not been paid on time in the prescribed amount, or deficiencies in the documents have not been eliminated or explanations have not been provided pursuant to subsection (3) of this section within the specified term, the Patent Office shall, pursuant to the provisions of § 29<sup>1</sup> of this Act, make a decision to reject the supplementary protection application and shall notify the applicant for supplementary application thereof in writing. The provisions of § 30 apply upon appeal against the decisions of the Patent Office.  
[RT I 2004, 20, 141 – entry into force 01.05.2004]

### **§ 39<sup>4</sup>. Publication of notices concerning supplementary protection**

The Patent Office shall publish notices prescribed by a corresponding Regulation on supplementary protection in the official gazette of the Patent Office.  
[RT I 2004, 20, 141 – entry into force 01.05.2004]

### **§ 39<sup>5</sup>. Registration of supplementary protection in register**

(1) Supplementary protection is registered, depending on the basic patent, by entering the data prescribed by a corresponding Regulation on supplementary protection either in the register of patents specified in Chapter VII of this Act or in the register of European patents valid in Estonia specified in Chapter VII<sup>1</sup> of this Act.

(2) If supplementary protection is granted, entries of registration data shall be made in a corresponding register specified in subsection (1) of this section.

(3) Entries of registration data are made on the basis of the decision of the Patent Office specified in subsection 39<sup>3</sup>(4) of this Act, decision of the Board of Appeal or court judgment.

(4) Registration data are:

- 1) the registration number;
- 2) the registration date;
- 3) information concerning the supplementary protection certificate specified in a corresponding Regulation on supplementary protection.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

### **§ 39<sup>6</sup>. Entry into force and extension of term of supplementary protection**

[RT I 2004, 20, 141 – entry into force 01.05.2004]

(1) In order for supplementary protection to enter into force or to extend the term of supplementary protection, a state fee shall be paid pursuant to subsections 42 (6) – (8) of this Act.

[RT I 2009, 4, 24 – entry into force 01.03.2009]

(2) In order to extend supplementary protection for medicinal products for paediatric use pursuant to Article 36 of Regulation (EC) No 1901/2006 of the European Parliament and of the Council, a state fee shall be paid within six months before expiry of the term of supplementary protection.

[RT I 2009, 4, 24 – entry into force 01.03.2009]

### **§ 39<sup>7</sup>. Issue of supplementary protection certificates**

(1) The Patent Office shall issue a supplementary protection certificate to the applicant for supplementary protection for a medicinal product or plant protection product concurrently with the publication of a notice on the grant of supplementary protection in the official gazette of the Patent Office.

(2) The requirements for the format of and procedure for issue of supplementary protection certificates shall be established by the minister responsible for the area.

[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

## **Chapter IX STATE FEES**

### **§ 40. State fees**

In the cases prescribed by this Act, a state fee shall be paid for the performance of acts, issue of documents and maintenance of patent applications and patents according to the rates provided in the State Fees Act.

[RT I 2006, 58, 439 – entry into force 01.01.2007]

### **§ 41. Payment of state fees**

(1) A state fee shall be paid by an applicant, proprietor of a patent, proprietor of supplementary protection or another party who has an interest in the performance of an act or the issue of a document prescribed in this Act or maintenance of a patent application, patent or supplementary protection. By agreement with an applicant, proprietor of a patent or proprietor of supplementary protection, the state fee may be paid therefor by another person. In the case of transfer of a patent application, patent or supplementary protection, the state fee shall be paid by the applicant, proprietor of the patent, proprietor of supplementary protection or the transferee of the patent application, patent or supplementary protection or by another person by agreement with the latter.

[RT I 2009, 4, 24 – entry into force 01.03.2009]

(2) A state fee is deemed to be paid upon receipt of information by the Patent Office concerning the paid state fee. If payment has been erroneously made for the same act for more than once or by different persons, the information first received regarding the state fee paid in the correct amount shall be taken as a basis of the payment of the state fee.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(3) [Repealed – RT I, 29.11.2011, 1 – entry into force 01.01.2012]

### **§ 42. Payment of state fee for year of validity**

[RT I 2004, 20, 141 – entry into force 01.05.2004]

(1) The state fee for a year of validity shall be paid on the due date of payment or within six months before the due date of payment. The last day of the calendar month during which the year of validity begins is deemed to be the due date of payment.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

(2) State fees for the first, second and third year of validity shall be paid at the same time on the due date of payment for the third year of validity or within six months before the due date of payment of the state fee for the third year of validity.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

(3) The state fee for a year of validity may be paid within six months after the due date of payment if a supplementary state fee is also paid.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

(4) The Patent Office may grant an applicant or a proprietor of a patent, if the applicant or proprietor is also the author and is making serious preparations for the application of the invention in the Republic in Estonia, a period of grace for the payment of the state fee for the first five years of validity. The application for a period of grace and proof of preparations for the application of the invention shall be filed with the Patent Office before the corresponding due date of payment passes. The decision of the Patent Office regarding the grant of a period of grace for the payment of the state fee for a year of validity is final.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

(5) If the Patent Office refuses to satisfy an application for a period of grace and the due date for payment has passed, the state fee for the year of validity may be paid without a supplementary state fee within two months from the date of the decision of the Patent Office.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

(6) The state fee for the first year of validity of supplementary protection shall be paid on the due date of payment or within six months before the due date of payment. The last day of the calendar month during which the term of validity of the basic patent ends is deemed to be the due date of payment.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

(7) The state fee for each following year of validity of supplementary protection and for extension of the period of validity of supplementary protection for medicinal products for paediatric use shall be paid on the due date of payment or within six months before the due date of payment. The last day of the calendar month during which the year of validity of supplementary protection begins or, in the case of medicinal products for paediatric use, the last day of the calendar month during which the extended period of validity of supplementary protection begins is deemed to be the due date of payment.

[RT I 2009, 4, 24 – entry into force 01.03.2009]

(8) The state fee for a year of validity of supplementary protection may be paid within six months after the due date of payment has passed if a supplementary state fee is also paid.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

(9) Upon filing an international application for national processing, state fees for the first, second and third year of validity shall be paid without the supplementary state fee specified in subsection (3) of this section if the due date for payment of the state fee has passed by the filing date of the request for acceptance for national processing.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

(10) In case a separated patent application is filed on the basis of subsections 9 (2) or (3) of this Act, the applicant shall, within two months from the actual filing date of the specified application with the Patent Office, pay state fees for all preceding years of validity, taking into account that the filing date of the initial patent application shall be the basis for the calculation of years of validity of a separated patent application. If, in the case of the last year of validity the due date of payment for which has passed, the term of six months for the payment of a supplementary state fee specified in subsection (3) of this section has not yet passed, the state fee for such year of validity may be paid without a supplementary state fee within two months from the actual filing date of a separated patent application with the Patent Office. If a state fee is not paid for the last year of validity within the specified two months' period, the state fee may be paid until the end of the six months' period provided for in subsection (3), if a supplementary state fee is also paid.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

(11) The state fee for a year of validity may be paid also if failure to pay the state fee occurred due to *force majeure* or some other impediment beyond the control of the applicant, proprietor of the patent, proprietor of supplementary protection or their representative. The Patent Office shall resume the processing of a patent application, the validity of the patent or validity of supplementary protection if the applicant, proprietor of the patent or proprietor of supplementary protection files a request for the resumption of processing of the patent application, the validity of the patent or validity of supplementary protection, proves the existence of *force majeure* or some other impediment beyond his or her control or his or her representative's control within two months after the impediment ceases to exist, and pays the state fee for the year of validity and a supplementary state fee in the cases prescribed in subsections (3), (8) or (10) of this section and for the resumption of the processing of a patent application, validity of the patent or validity of supplementary protection. The aforesaid

request can be filed within one year from the due date prescribed in this section or, in the cases provided for in subsection (3), (8) or (10), from the expiry of the term provided for in these subsections.  
[RT I 2009, 4, 24 – entry into force 01.03.2009]

## **Chapter X**

# **TRANSFER OF PATENT RIGHTS**

### **§ 43. Transfer of right to apply for patent**

(1) The transfer of the right to apply for a patent from the author to another person shall be performed on the basis of a separate written agreement or on the basis of a contract or employment contract pursuant to subsection 12 (2) of this Act. Such an agreement or contract shall contain provisions which ensure, pursuant to subsection 13 (8), the right of the author to receive fair proceeds from the profit received from the invention during the entire term of validity of the patent.

(2) Upon transfer of the right to apply for a patent on the basis of law, the law of the country of residence or location of the applicant applies.

(3) The legal basis for the transfer of the right to apply for a patent pursuant to subsections (1) or (2) of this section and information concerning the author shall be indicated in the patent application. In cases of reasonable doubt, the Patent Office and courts have the right to require the submission of documents certifying the right to apply for a patent and the authorship of the invention.  
[RT I 2004, 20, 141 – entry into force 01.05.2004]

### **§ 44. Transfer of patent application**

(1) An applicant may transfer a patent application which is being processed by the Patent Office to another person.

(2) Upon the death of an applicant or dissolution of an applicant that is a legal person, a patent application which is being processed by the Patent Office shall transfer to a successor or legal successor.

(3) In order to amend the data on the applicant in a patent application, the applicant or the transferee of the patent application shall file a request and information concerning the paid state fee with the Patent Office. If the request is filed by the transferee of the patent application, the request shall be accompanied by reliable documents certifying the transfer.  
[RT I 2009, 4, 24 – entry into force 01.03.2009]

(4) The Patent Office shall amend the data on the applicant in the patent application.

(5) A patent application is deemed to be transferred to another person from the date on which the data is amended.

### **§ 45. Transfer of patent**

(1) The proprietor of a patent may transfer the patent to another person.

(2) Upon the death of the proprietor of a patent or dissolution of the proprietor if the proprietor is a legal person, the patent transfers to a successor or legal successor.

(3) In order to amend the data on the proprietor of a patent or proprietor of supplementary protection in a registration, the proprietor of the patent or the transferee of the patent or supplementary protection shall file a request and information concerning the paid state fee with the Patent Office. If the request is filed by the transferee of the patent or supplementary protection, the request shall be accompanied by reliable documents certifying the transfer.  
[RT I 2009, 4, 24 – entry into force 01.03.2009]

(4) The request specified in subsection (3) of this section shall be filed within one year from the date of transfer of the patent determined by the transaction or from the date of creation of legal succession. If a patent is transferred pursuant to a court judgment, the request shall be filed within one month from the date on which the court judgment enters into force.

(5) The Patent Office shall make an entry in the register on amendment of the registration data specified in clause 35 (5) 6) of this Act.

(6) An entry on amendment of the registration data shall enter into force on the publication date of a notice of the entry on amendment of the data in the official gazette of the Patent Office.

(7) A patent is deemed to be transferred to another person from the date of transfer pursuant to a transaction or court judgement, or from the date of creation of legal succession.

(8) A person to whom a patent is transferred pursuant to the provisions of this section may commence to use of the rights of the proprietor of the patent as of the date on which the entry on amendment of the registration data becomes valid.

#### **§ 46. Licence**

(1) The proprietor of a patent (licensor) may, pursuant to a written licence agreement (hereinafter by way of a licence), grant the use of the rights of the proprietor of the patent listed in subsection 15 (1) of this Act to another person or persons (licensee) in part or in full.

(2) With the consent of a licensor, a licensee may, by way of a sublicense, transfer the rights deriving from a licence to a third person.

(3) The term of a licence shall not be longer than the term of patent protection, in the case of supplementary protection of medicinal products and plant protection products not longer than the term of supplementary protection.

(4) Licences may be registered in the register. A written request of the licensor or the licensee together with a copy of the licence agreement or an extract from the licence agreement which contains information necessary for the registration shall be the basis for making an entry concerning a licence. A state fee shall be paid for an entry concerning a licence. An unregistered licence has no legal effect with respect to third persons. If there is a conflict of rights granted by different licences to several licensees, preference is given to the licensee whose licence is registered.

(5) Upon the transfer of a patent to another person in the cases provided for in § 45 of this Act, the rights and obligations deriving from the licence are also transferred to the said person.  
[RT I 2004, 20, 141 – entry into force 01.05.2004]

#### **§ 47. Compulsory licence**

(1) A person who is interested in using a patented invention and is capable of doing so in the Republic of Estonia, may, upon refusal of the proprietor of the patent to grant a licence, file an action with a court for acquiring a compulsory licence if:

1) the proprietor of the patent has not used the invention in the Republic of Estonia within three years from the publication of the notice concerning the grant of the patent or within four years from the filing of the patent application, and in such case the term which will expire later shall apply;

2) the proprietor of the patent does not use the invention to an extent corresponding to the needs of the domestic market of the Republic of Estonia;

3) the patent hinders the use of another, technically advanced invention significant for the economy of the Republic of Estonia;

4) national defence, environmental protection, public health and other significant national interests of the Republic of Estonia require the use of the invention, including the need to use the invention in connection with a natural disaster or other emergency.

5) the patent hinders the grant of plant variety rights pursuant to the Plant Propagation and Plant Variety Rights Act or the use of the protected variety.

[RT I 2005, 70, 540 – entry into force 01.01.2006]

(1<sup>1</sup>) A compulsory licence shall not be granted if the proprietor of a patent imports the product protected by the patent from any member state of the World Trade Organisation to an extent corresponding to the needs of the domestic market of the Republic of Estonia.

(2) In the case provided for in clause (1) 3) of this section, the proprietor of a patent has the right to acquire a compulsory licence for another invention, unless the exchange of licences is agreed on (cross-l licence).

(3) Upon the grant of a compulsory licence, a court shall determine the terms and conditions of the compulsory licence, including the extent and duration of the use of the invention and the amount and procedure for payment of the licence fee. The extent and duration of the use of the invention shall be determined on the basis of the needs of the domestic market of the Republic of Estonia.

(4) The right to use an invention on the basis of a compulsory licence may transfer to another person only together with the enterprise in which the compulsory licence is used or was intended to be used pursuant to the terms of the compulsory licence.

(5) The grant of a compulsory licence does not hinder the proprietor of a patent from using the invention or granting licences to other persons.

(6) A compulsory licence is valid as of the date of making an entry in the register. A request for the making of a register entry together with a copy of the court judgment and information on payment of the state fee shall be filed with the Patent Office within one month after entry into force of the court judgment.

(7) If circumstances change, both the licensor and the licensee may file an action with a court for amendment of the terms of the compulsory licence.

(8) Regulation (EC) No 816/2006 of the European Parliament and of the Council on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems (OJ L 157, 09.06.2006, pp. 1-7) applies to filing an action for acquiring a compulsory licence for the manufacture of pharmaceutical products protected by a patent for import or export.  
[RT I 2009, 4, 24 – entry into force 01.03.2009]

#### **§ 47<sup>1</sup>. National non-commercial use**

(1) A patented invention may be used by the Government of the Republic or a third person authorised by the Government of the Republic without the permission of the proprietor of the patent in the event of an epidemic within the meaning of the Communicable Diseases Prevention and Control Act and in an emergency situation within the meaning of the Emergency Situation Act (hereinafter national non-commercial use).

(2) National non-commercial use may include the activities specified in § 15 of this Act.

(3) The conditions for making decisions concerning national non-commercial use and for grant of compensation to the proprietor of a patent are provided by law.  
[RT I 2009, 4, 24 – entry into force 01.03.2009]

## **Chapter XI CONTESTATION AND PROTECTION OF PATENT RIGHTS**

#### **§ 48. Contestation of authorship**

(1) Disputes concerning authorship are resolved in court after the publication of a patent application pursuant to the provisions of § 24 of this Act.

(2) Any natural person who finds that he or she is the author of an invention pursuant to the provisions of subsection 13 (1) or (2) of this Act may file an action with a court against the applicant or, after the grant of a patent, against the proprietor of the patent for recognition of his or her authorship. Authorship may also be contested by a successor of such person.

(3) If authorship is recognised, the person may, on the basis of § 12 of this Act, contest the applicant or proprietor of the patent pursuant to subsection 49 (1) of this Act in the course of the same case.  
[RT I 2003, 18, 106 – entry into force 01.04.2003]

#### **§ 49. Contestation of proprietor of patent and patent**

(1) Any person who finds that the right to a patent belongs to the person pursuant to § 12 of this Act may, after the publication of a patent application pursuant to the provisions of § 24 of this Act, file an action with a court against the applicant or proprietor of the patent for recognition of the person's rights. If the action is satisfied in the case of a patent application, the person has the right to continue applying for the patent in the person's name, revoke the patent application and file a new patent application with the same filing date concerning the same invention, or revoke the patent application. In the case of a patent, the person has the right to register the patent unamended or subject to amendments in the person's name, or revoke the patent.

(2) A request stating a choice made pursuant to subsection (1) of this section together with a copy of the court judgment and, in the prescribed cases, information on payment of the state fee shall be filed with the Patent Office within one month after entry into force of the court judgment. While filing a new patent application or making amendments to the patent, the person shall file the documents of the new patent application in accordance with the provisions of subsections 19 (1), (2) and (3) of this Act or, in the case of amendments to the patent, the amended description of the invention and patent claims with the Patent Office and pay the state fee within three months from the date of the court judgment which has entered into force. If these requirements are not complied with, the patent application or patent shall be revoked.

(3) Upon satisfaction of an action filed pursuant to subsection (1) of this section, the person who has used the invention or made serious preparations therefor may apply to a court for the right to use the invention for a charge or free of charge in the person's economic or professional activities after the transfer of the patent, provided that the nature of use of the invention shall not change.

(4) Any person who finds that an invention protected by a patent does not comply with the provisions of § 8 of this Act, may file an action with a court against the proprietor of the patent for the revocation of the patent in part or in full. The proprietor of the patent may restrict the scope of patent protection in the course of the

action if this will result in the invention complying with the provisions of § 8. A request for making of a register entry together with a copy of the court judgment and, in the prescribed cases, information on payment of the state fee shall be filed with the Patent Office within one month after entry into force of the court judgment. If amendments are made to the patent, the proprietor of the patent must file the description of the invention and patent claims amended pursuant to the court judgment with the Patent Office and pay the state fee for making of amendments to the patent within three months after entry into force of the court judgment.

(5) An action specified in subsection (4) of this section can be filed for the full revocation of a patent even after the patent has expired.

(6) Revocation of a patent in part or in full shall not be a basis for the annulment of a court judgment made concerning the infringement of the exclusive right of the proprietor of the patent or for the cancellation of a contract, including a licence agreement, before the court judgment on the revocation of the patent in part or in full enters into force. If performance of a contract continues, a party has the right to require that the other party change the payments or make recalculations.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

### **§ 50. Contestation of patent in Board of Appeal**

(1) Any person may file a revocation application with the Board of Appeal and request the revocation of a patent within nine months from the publication date of the notice of grant of the patent.

(2) A patent can be contested on the basis of the following allegations:

- 1) the invention does not comply with the provisions of §§ 6, 7 or 8 of this Act;
- 2) the invention is not disclosed in the description of the invention in a sufficiently clear and concise manner to enable a person skilled in the art to make the invention;
- 3) the invention protected by the patent, including an invention separated from an initial patent application pursuant to subsection 9 (2) or (3) of this Act, does not correspond to the subject matter of the invention as disclosed in the initial patent application.

(3) The Board of Appeal has the right:

- 1) if the revocation application is granted, to require the Patent Office to revoke the patent provided that the facts set out in the revocation application preclude the maintenance of the patent,
- 2) to reject the revocation application if the facts set out therein do not preclude the maintenance of the patent unamended, or
- 3) if the revocation application is granted in part, to require the Patent Office to maintain the patent as amended provided that, during the processing of the revocation application, the proprietor of the patent files a request for making such amendments to the patent which are not contrary to the provisions of this Act and which eliminate the facts set out in the revocation application which preclude the maintenance of the patent.

(4) In the case of a decision specified in clause (3) 3) of this section, the proprietor of the patent shall file with the Patent Office the description of the invention and patent claims amended pursuant to the decision and pay the state fee for making of amendments to the patent within three months from the entry into force of the decision.

(5) The Patent Office shall make an entry in the register on the basis of a decision of the Board of Appeal and shall publish a notice concerning the revocation of a patent or making of amendments to a patent in the official gazette of the Patent Office. If, in the case of amendments to a patent, the proprietor of the patent fails to file the prescribed documents or pay the state fee within the term specified in subsection (4) of this section, the patent is deemed to be revoked and the invention is deleted from the register.

(6) The person who filed a revocation application or the proprietor of a patent may contest a decision of the Board of Appeal in proceedings on petition in court within three months from the publication date of the decision.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

### **§ 51. Protection of rights of author**

(1) The author of an invention or upon the death of the author his or her successors may file, without a limitation period, an action with a court upon infringement of the rights provided for in subsection 13 (7) of this Act and for resolution of other non-proprietary disputes arising from authorship.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(2) An author may file an action with a court for the resolution of a proprietary dispute relating to the use of an invention within three years from the date on which the author becomes or should have become aware of the infringement of the author's right.

## **§ 52. Protection of rights of applicant**

(1) Pursuant to § 30 of this Act, an applicant may file an appeal with the Board of Appeal against a decision of the Patent Office within two months from the date of the decision.  
[RT I 2008, 59, 330 – entry into force 01.01.2009]

(2) Upon disagreement with a decision of the Board of Appeal, an applicant may contest the decision by filing an appeal with a county court within three months from the publication date of the decision.  
[RT I 2005, 39, 308 – entry into force 01.01.2006]

(3) During the period of provisional protection, an applicant may file an action with a court upon infringement of the exclusive right which has taken place during the period of provisional protection and may request prevention of the infringement.

## **§ 53. Legal remedies in case of unlawful use of invention protected by patent**

(1) In the case of unlawful use of an invention protected by a patent, the proprietor of the patent may demand:  
1) compensation for damage caused by unlawful use of the invention pursuant to § 1043 of the Law of Obligations Act;

2) [Repealed - RT I 2003, 18, 106 – entry into force 01.04.2003]

3) delivery of that which has been received as a result of the unlawful use of the invention pursuant to §§ 1037 and 1039 of the Law of Obligations Act;

4) termination of the unlawful use of the invention and refraining from further violation pursuant to § 1055 of the Law of Obligations Act;

(2) Upon use of an invention protected by a patent in good faith, a court may order compensation not exceeding the extent of damage caused within five years before the filing of the action.  
[RT I 2004, 20, 141 – entry into force 01.05.2004]

## **§ 54. Protection of rights of other persons**

(1) A person who uses an invention in good faith before a patent application is filed may file a petition with a court for recognition of the person's right of prior use. The court shall hear the petition by way of a proceeding on petition.  
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(2) A person who is interested in using a patented invention may file an action with a court against the proprietor of the patent for acquiring a compulsory licence in the cases specified in subsection 47 (1) of this Act.

(3) A person who uses an invention on the basis of a licence agreement (licensee) may file an action with a court for resolution of a dispute related to the licence agreement.

(4) A licensee may also file an action upon violation of the exclusive right of the proprietor of a patent by other persons, unless otherwise provided in the licence agreement. The licensee shall notify the proprietor of the patent of the licensee's wish to file an action beforehand. The obligation to notify is deemed to be performed if the notice is sent to the proprietor of the patent by registered mail to the address indicated in the licence agreement or to the address entered in the register of patents.

(5) Any person may, upon doubt that the person's activities may infringe the exclusive right of the proprietor of a patent, file an action with a court against the proprietor of the patent for recognition that the existence of the patent does not hinder the person's economic or professional activities.

(6) Any person against whom an action has been filed on the basis of § 53 of this Act or misdemeanour proceedings or proceedings relating to a criminal offence have been commenced in connection with an alleged infringement of the exclusive right of the proprietor of a patent, has the right, pursuant to subsection 49 (4) of this Act, to file an action with a court against the proprietor of the patent for the revocation of the patent in part or in full. The court hearing an alleged infringement of an exclusive right may, at the request of the alleged infringer, suspend the proceedings of the infringement of the exclusive right for the duration of the action for the revocation of the patent. As a prerequisite for suspending, the court may request a security for the compensation for potential damage caused to the proprietor of the patent if the patent remains valid.  
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

## **§ 55. Procedure for hearing of disputes related to patents**

(1) In the cases provided for in this Act, disputes related to patents shall be heard by the Board of Appeal or in court.

(2) Actions and petitions referred to in §§ 47 - 49 and 51, subsections 54 (1) - (3), (5) and (6) of this Act, and appeals and actions referred to in §§ 50 and 52 of this Act fall within the competence of Harju County Court. Actions referred to in § 53 and subsection 54 (4) and § 55<sup>1</sup> fall within the competence of the county court in the jurisdiction of which the offence occurred. Implementation of provisional measures referred to in Article 50 of the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement

(RT II 1999, 22, 123) falls within the competence of the county court in the jurisdiction of which the offence occurred.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(3) Courts shall hear disputes related to patents pursuant to the procedure provided for in the Code of Civil Procedure, taking into consideration the specifications provided for in this Act.

(4) [Repealed - RT I 2005, 39, 308 – entry into force 01.01.2006]

(5) The Board of Appeal shall hear complaints filed with the Board of Appeal on the basis of this Act pursuant to the procedure provided for in the Principles of Legal Regulation of Industrial Property Act.

[RT I 2005, 39, 308 – entry into force 01.01.2006]

### **§ 55<sup>1</sup>. Burden of proof**

(1) If an action is filed on the basis of the provisions of subsection 15 (2) of this Act, the defendant is required to prove that the defendant used a process different from the patented process for manufacturing a similar product.

(2) If the use of a different process cannot be proved, the product shall be deemed to have been manufactured according to the patented process provided that, in spite of reasonable efforts, the proprietor of the patent has not succeeded in determining the process actually used for manufacturing the product and the use of the patented process is likely or if the product manufactured according to the patented process is new.

(3) Evidence submitted by the defendant containing the defendant's production or business secrets may be disclosed only with the consent of the defendant.

### **§ 56. Acts of court upon filing of statement of claim**

(1) In the case of an action specified in subsection 54 (4) of this Act, a copy of the notice sent to the proprietor of a patent shall be annexed to the statement of claim. If the copy is missing, the court shall not proceed with the statement of claim and shall establish a term for the plaintiff to perform the obligation to notify.

(2) In order to secure an action for prevention of ongoing infringement, a court may, *inter alia*, order, at the request of the plaintiff, that the products or objects protected by a patent and manufactured without the permission of the proprietor of the patent, the use of which infringes the exclusive right of the proprietor of the patent, shall be withdrawn from the market for the time of hearing the action filed for termination of an infringement of the exclusive right.

(3) In the case specified in subsection (2) of this section, a court may, at the request of the defendant, order that the possessor of a product or an object may continue the use of the product or object for a fair fee payable to the proprietor of the patent during the entire or a part of the remaining time of the term of validity of the patent.

[RT I 2005, 39, 308 – entry into force 01.01.2006]

### **§ 57. Participation of Patent Office**

(1) [Repealed - RT I 2005, 39, 308 – entry into force 01.01.2006]

(2) A court shall send a copy of the court decision made in a dispute related to a patent to the Patent Office for its information.

[RT I 2005, 39, 308 – entry into force 01.01.2006]

### **§ 58. Representative in resolution of disputes related to patents in court**

(1) In resolution of a dispute related to a patent, a patent attorney may act as a representative in a county court and in a circuit court. In Supreme Court, a patent attorney may act as a representative only together with an attorney-at-law.

[RT I 2005, 39, 308 – entry into force 01.01.2006]

(2) [Repealed – RT I 2004, 20, 141 – entry into force 01.05.2004]

(3) [Repealed – RT I 2004, 20, 141 – entry into force 01.05.2004]

## **Chapter XII**

# PATENTING OF INVENTIONS IN FOREIGN STATES

## § 59. Procedure for patenting inventions

(1) Persons whose residence or seat is in the Republic of Estonia may patent their inventions in foreign states regardless of the patenting thereof in the Republic of Estonia.

(2) Persons whose residence or seat is in the Republic of Estonia shall patent their inventions in foreign states independently in accordance with the law of the foreign state and international conventions.

(3) A permit of the Ministry of Defence shall be obtained for filing in a foreign state a patent application containing an invention relating to national defence, which is classified in Estonia.

[RT I 2009, 4, 24 – entry into force 01.03.2009]

## § 60. Filing of international application

International applications are filed pursuant to subsections 32 (3) and (4) of this Act.

## Chapter XII<sup>1</sup> LIABILITY

[Repealed -RT I, 12.07.2014, 1 - entry into force 01.01.2015]

## § 60<sup>1</sup>. Infringement of moral rights of author

[Repealed – RT I, 12.07.2014, 1 – entry into force 01.01.2015]

## § 60<sup>2</sup>. Procedure

[Repealed – RT I, 12.07.2014, 1 – entry into force 01.01.2015]

## Chapter XIII IMPLEMENTATION OF ACT

## § 61. Entry into force of Act

(1) The Patents Act enters into force on 23 May 1994.

(2) The provisions of clause 11 (2) 1) of this Act apply after the membership of the Republic of Estonia in the Paris Convention for the Protection of Industrial Property is restored.

(3) The provisions of subsection 23 (2) and Chapter VI of this Act do not apply earlier than three months after the accession of the Republic of Estonia to the Patent Cooperation Treaty entered into on 19 June 1970 in Washington.

(4) Micro-organism strains are protected by patents after the accession of the Republic of Estonia to the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure of 1977 (RT II 1996, 14/15, 49).

(5) If a patent application is filed within six months after entry into force of this Act, all priorities shall be recognised on the basis of a first patent application or registration application of a utility model, filed in any contracting member country to the Paris Convention of the Protection of Industrial Property, and dated not earlier than 20 August 1990.

(6) Supplementary protection for medicinal products or plant protection products which are registered and which contain an active substance protected by a basic patent granted prior to 1 January 2000 may be applied for until 30 June 2000.

(7) In the case of patent applications containing a classified invention, the provisions of the State Secrets and Classified Information of Foreign States Act and an international agreement shall be applied in addition to the provisions of this Act.

[RT I 2009, 4, 24 – entry into force 01.03.2009]

## § 62. [Omitted from this text]

<sup>1</sup>Directive 98/44/EC of the European Parliament and of the Council on the legal protection of biotechnological inventions (OJ L 213, 30.07.1998, pp. 13–21); Council Regulation (EEC) No 1768/92 concerning the creation

of a supplementary protection certificate for medicinal products (OJ L 182, 02.07.1992, pp. 1–5); Regulation (EC) No 1901/2006 of the European Parliament and of the Council on medicinal products for paediatric use and amending Regulation (EEC) No 1768/92, Directive 2001/20/EC, Directive 2001/83/EC and Regulation (EC) No 726/2004 (OJ L 378, 27.12.2006, pp. 1–19); Regulation (EC) No 1610/96 of the European Parliament and of the Council concerning the creation of a supplementary protection certificate for plant protection products (OJ 198, 08.08.1996, pp. 30–35); Regulation (EC) No 816/2006 of the European Parliament and of the Council on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems (OJ L 157, 09.06.2006, pp. 1–7). [RT I 2009, 4, 24 – entry into force 01.03.2009]