

**DENMARK**

**Utility Models Act**

Act NO. 130 of February 26, 1992 as amended by Act NO. 972 of December  
17, 1997

ENTRY INTO FORCE: July 1, 1998

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## **Chapter I General provisions**

### **1.**

(1) Any creation which is susceptible of industrial application or which provides a solution to a technical problem may on application, in accordance with this Act, be registered as a utility model.

(2) Any person who has created a utility model, or his successor in title, shall obtain an exclusive right to exploit the creation commercially upon registration.

### **2.**

(1) Creations shall not be registered as utility models if relating to

- (i) One of the items referred to in section 1(2) to (4), in the Danish Patents Act,

- (ii) plants or animals,

- (iii) war materiel or

- (iv) methods, cf. however section 47 of this Act.

(2) The Minister of Business and Industry shall lay down rules, after negotiation with the Minister of Defence and the Minister of Justice, concerning what is meant by war materiel for the purposes of this Act.

### **3.**

(1) The creation shall be new in relation to the state of the art and shall differ distinctly therefrom.

(2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, lectures, exhibition, offer for sale, use, reproduction or in any other way. Additionally, the contents of patent applications or utility model applications previously filed with effect for Denmark shall be regarded as comprised in the state of the art, if such applications are made available to the public. However, the requirement in subsection 1 hereof that the creation shall differ distinctly from the state of art shall not apply in relation to the contents of such applications.

(3) The provisions in section 2(5) of the Patents Act relating to exceptions from the requirement that creations shall be new shall apply *mutatis mutandis*.

#### 4.

(1) Section 3(1) to (3) of the Patens Act relating to the contents of the exclusive right, section 4 relating to a prior right of exploitation and section 5 relating to the right of exploitation shall apply mutatis mutandis.

(2) Article 76 in the Community Patent Convention shall apply to any acts concerning products put on the market in another State which has ratified or acceded to the Agreement relating to Community Patents.

#### 5.

(1) On request, an application for utility model registration of a creation which has been disclosed not earlier than 12 months before the date of filing in an application for a utility model or a patent in this country or a utility model, a patent or an inventor's certificate in another country party to the Paris Convention for the Protection of Industrial Property of 20 March 1883, shall, for the purpose of section 3(1) and (2), and section 4(1) in respect of a prior right of exploitation, be regarded as filed at the same time as the earlier application. The same right of priority shall be enjoyed where the earlier application for protection is filed in a country which is not a party to the Convention, provided that an equivalent right of priority is granted on the basis of a Danish utility model application by the country in which the earlier application was filed and that the legislation of that country is in principle in conformity with the Convention.

(2) The Minister of Business and Industry shall lay down the rules for the right to claim priority under subsection 1 hereof.

#### 6.

(1) If the applicant has filed a previous patent application for Denmark, the applicant may use the patent application, in whole or part, as a basis for a utility model application in respect of the same creation. The applicant may request that the date of filing of the patent application shall apply to the utility model application. If priority has been requested in the patent application, cf. section 6 of the Patents Act, such request shall also apply to the utility model application.

(2) The Minister of Business and Industry shall lay down the rules for requests under subsection 1 hereof.

**Chapter II Utility model applications and examination and other processing thereof, etc.**

**7.**

(1) The Patent Authority of this country shall be the Patent Office and the Patent Board of Appeal (Board of Appeal for Industrial Property). For the purposes of this Act, "Patent Authority" shall mean the Patent Authority of this country unless otherwise stated.

(2) An application for the registration of a utility model shall be filed with the Patent Office which shall be the registration authority. The application shall include a statement of the matter for which protection is sought. A fee shall be paid for the application.

(3) The creation shall be described or shown sufficiently clear in the application to enable a person skilled in the art to carry out the creation.

(4) The Minister of Business and Industry shall lay down rules concerning the form and contents of applications for registration and concerning processing of applications.

**8.**

(1) If the application relates to a creation of a product obtained by a microbiological process, section 8(2), 4th clause, concerning description and section 8a concerning depositing of biological material in the Patents Act shall apply mutatis mutandis.

(2) If biological material has been deposited pursuant to section 8a, cf. subsection 1, of the Patents Act, any person shall be entitled to have a sample when the files become available pursuant to section 16 of this Act. Section 22(6) to (8) relating to the furnishing of a sample shall apply mutatis mutandis.

(3) The Minister of Business and Industry shall lay down the rules for depositing and furnishing of samples under subsections 1 and 2 hereof.

**9.**

In the same application, utility model registration may not be applied for in respect of two or more mutually independent creations.

**10.**

If utility model registration is applied for in respect of a creation which is disclosed by the applicant in an earlier utility model application in which no final decision has been given by the Patent Authority, the later application shall, at the request of the applicant, be deemed to have been filed at the time when the documents disclosing the creation were received by the Patent Authority. The Minister of Business and Industry shall lay down specified rules in this respect.

**11.**

An application for registration of a utility model may not be amended in such a way that protection is claimed for subject-matter which was not disclosed in the application at the time when it was filed.

**12.**

(1) The Patent Office shall ensure that the application fulfill the requirements of sections 1, 2, 9 and 11 of this Act.

(2) The applicant may request that the Patent Office also ensure that the requirements of section 3 of this Act be fulfilled. The request shall be accompanied by a fee.

**13.**

(1) If the Patent Authority finds that the application does not comply with the requirements, the applicant shall be notified accordingly and be invited to file his observations or to correct the application within a time limit to be specified.

(2) The application shall be shelved, if the applicant fails to file the required observations or to take steps to correct the application before expiry of the time limit. The notification of the applicant referred to in subsection 1 hereof shall contain information to that effect.

(3) The proceedings for grant shall be resumed, if the applicant submits his observations or takes steps to correct the application within 2 months after expiry of the specified time limit and pays a resumption fee.

(4) The provisions in subsections 1 to 3 hereof shall also apply when a request is made under section 12(2) of this Act.

**14.**

(1) If the application is found to comply with the requirements, the creation shall be registered. Notification of utility model registration shall be published by the Patent Office.

(2) If the Patent Authority still has objections to the acceptance of the application, and the applicant has had an opportunity to file his observations in respect of the objections, the application shall be refused, unless the Patent Authority considers it necessary once more to invite the applicant under section 13 of this Act.

**15.**

If any person claims or proves to the Patent Authority that he, and not the applicant, is entitled to the creation, sections 17 and 18 of the Patents Act shall apply *mutatis mutandis*.

**16.**

(1) As from the date on which the creation is registered, the files of the application shall be available to the public. At the request of the applicant, registration of the creation may be postponed in up to 15 months from the date of application or, if priority has been claimed, from the date of priority, cf. section 5 of this Act.

(2) When 15 months have elapsed from the date of filing or, if priority has been claimed, from the date of priority, the files shall be available to the public, even if the creation has not been registered.

(3) At the request of the applicant the files of the application shall be made available earlier than prescribed in subsections 1 and 2 hereof.

(4) If a document contains business secrets which do not concern the creation, section 22(5) of the Patents Act shall apply *mutatis mutandis*.

### **Chapter III International utility model application**

#### **17.**

(1) An "international utility model application" shall mean an application under the Patent Cooperation Treaty, done at Washington on 19 June 1970.

(2) An international utility model application shall be filed with a patent authority or an international organisation which is competent under the Treaty and the Regulations to receive such application (receiving Office). An international utility model application may be filed with the Patent Authority of this country in accordance with rules laid down by the Minister of Business and Industry. The applicant shall pay the fee prescribed for the application to the Patent Authority.

(3) The provisions of sections 18 to 25 of this Act shall apply to international patent applications designating Denmark.

#### **18.**

An international utility model application which has been accorded an international filing date by the receiving Office shall have the same effect as a utility model application filed in this country on that date. The provision in section 3(2), 2nd clause of this Act, however, shall not apply, unless the application has been proceeded with under section 20 of this Act.

#### **19.**

An international utility model application shall be considered withdrawn as far as Denmark is concerned in the cases referred to in Article 24(1)(i) and (ii) of the Treaty.

#### **20.**

Section 31 of the Patents Act relating to an applicant wishing to proceed with an international application with respect to Denmark shall apply mutatis mutandis, however the time limits in section 31(1) and (2), last member, of the Patents Act for international utility model applications shall be 22 and 32 months, respectively.

#### **21.**

If the applicant withdraws a demand for international preliminary examination or a declaration to the effect that the applicant intends to apply the result of the examination in an application for utility model

registration for Denmark, section 32 of the Patents Act shall apply *mutatis mutandis* with the changed time limits referred to in section 20 of this Act.

## **22.**

(1) When an international utility model application has been proceeded with under section 20 of this Act, the provisions in Part I and II as well as section 37(1), (2), (4) and (5) of this Act shall apply to the application and to the examination and further processing thereof with the deviations laid down in this section and in sections 23 and 24 of this Act. The examination and further processing of the application shall only be commenced prior to the expiry of the time limits applicable under section 20 of this Act, if the applicant so requests.

(2) The provisions in section 16(2) and (3) of this Act shall apply even before the application has been proceeded with when the applicant has complied with his obligation under section 20 of this Act to file a translation of the application or, if the application is written in Danish, when the applicant has filed a copy thereof with the Patent Authority.

(3) For the purpose of section 31 of this Act, cf. section 48 of the Patents Act, and sections 38 and 42 of this Act, an international utility model application shall be deemed to have been made available to the public when it has been made available under subsection 2 hereof.

(4) If the utility model application complies with the requirements relating to form and contents provided for in the Treaty, it shall be accepted in that respect.

## **23.**

Section 34 of the Patents Act relating to acceptance or refusal of a patent, section 35 relating to notification and publication and section 37 relating to withdrawal if part of an international patent application has not been the subject of an international preliminary examination shall apply *mutatis mutandis*.

## **24.**

(1) If any part of an international utility model application has not been the subject of an international search or an international preliminary examination because the application has been deemed to relate to two or more mutually independent creations, and the applicant has not paid the

additional fee under the Treaty within the prescribed time limit, the Patent Authority shall review the finding to determine whether it was justified. If this is found to be the case, the said part of the application shall be considered withdrawn before the Patent Authority, unless the applicant pays the prescribed fee within 2 months after the date on which the Patent Authority notified him of the result of the review. If the Patent Authority considers that the finding was not justified, it shall proceed with the examination and other processing of the application in its entirety.

(2) The applicant may appeal against a decision under subsection 1 hereof by which an application is found to relate to two or more mutually independent creations. The provisions in section 37 of this Act shall apply *mutatis mutandis*.

(3) If the appeal is dismissed, the time limit for payment of the fee under subsection 1 hereof shall be calculated from the date on which the final decision is given.

## **25.**

(1) Section 38(1) and (2) of the Patents Act relating to the Patent Authority reviewing the justification of the decision by a receiving Office or a decision from the International Bureau shall apply *mutatis mutandis* to utility model applications.

(2) If the Patent Authority finds that the decision of the receiving Office or the International Bureau was not justified, the Patent Authority shall examine and process the application under Parts I and II and section 37(1), (2), (4) and (5) of this Act. If no international filing date has been accorded by the receiving Office, the application shall be deemed to have been filed on the date which in the opinion of the Patent Authority should have been accorded as the international filing date. If the application complies with the requirements relating to form and contents provided for in the Treaty, it shall be accepted in that respect.

(3) The provision in section 3(2), 2nd clause, shall apply to applications which are processed under subsection 2 hereof, if the application is made available to the public according to section 16 of this Act.

## Chapter IV Conversion of European patent application

### 26.

Section 88 of the Patents Act relating to conversion of a European patent application into a Danish patent application shall apply mutatis mutandis to a European patent application converted into a Danish utility model application. The Minister of Business and Industry shall lay down specified rules in this respect.

## **Chapter V Extent of registration and term of utility model**

### **27.**

(1) After registration the protection shall not be extended.

(2) The extent of the protection conferred by the utility model registration shall be determined by the claims. For the interpretation of the claims, the description and drawing may serve as a guide.

### **28.**

(1) The utility model registration shall apply until 3 years have elapsed from the date of filing of the application for registration, and may be renewed for an additional two periods of 3 and 4 years, respectively, against payment of the prescribed fees.

(2) Renewal of registration shall be published.

## **Chapter VI Licensing, transfer, etc.**

### **29.**

The transfer of the right to a registered utility model or the granting of a licence, including compulsory licence, shall on request be recorded in the Register. If a registered licence has terminated, the licence shall upon request be deleted from the Register.

### **30.**

(1) The proprietor of a registered utility model the exploitation of which is dependent on a patent or a registered utility model held by another person may obtain a compulsory licence to exploit the invention or creation protected by the latter patent or utility model registration, if it is deemed to be reasonable in view of the importance of the former utility model or for other special reasons.

(2) The proprietor of the patent or the registered utility model in respect of which a compulsory licence has been granted pursuant to subsection 1 hereof may obtain a compulsory licence to exploit the other registered utility model, unless special circumstances make it undesirable.

### **31.**

Sections 45 and 47 to 49 of the Patents Act relating to compulsory licence and section 50 of the same Act relating to the competence of the Maritime and Commercial Court in deciding on matters relating to the granting of compulsory licence shall apply mutatis mutandis to utility models.

## **Chapter VII Termination of registration, administrative examination, etc.**

### **32.**

(1) A utility model registration may be revoked by a court decision if:

- (i) registration has not been made according to sections 1 to 3 of this Act,
- (ii) registration relates to a creation which is not disclosed or shown in a manner sufficiently clear to enable a person skilled in the art to carry out the creation,
- (iii) the application has been amended contrary to section 11 of this Act, or
- (iv) the protection has been extended after registration.

(2) Section 52(2) to (4) of the Patents Act shall apply mutatis mutandis if a utility model registration is revoked pursuant to subsection 1 hereof.

### **33.**

(1) Section 53 of the Patents Act relating to transfer of a patent to another person and section 54 of the same Act relating to surrender of a patent shall apply mutatis mutandis.

(2) The provisions in article 75(1) and (2) of the Community Patent Convention relating to termination, in whole or in part, of a patent issued by the Patent Authority in this country shall apply mutatis mutandis to utility models.

(3) Any person shall be entitled to request the decision of the Patent Authority or to institute proceedings concerning termination, in whole or in part, of utility model registration pursuant to subsection 2 hereof. Such request shall be accompanied by a fee.

(4) If a request has been made under subsection 3 hereof, sections 35 to 37 of this Act shall apply mutatis mutandis. The Minister of Business and Industry shall lay down specified rules in this respect.

### **34.**

(1) When utility model registration has taken place, any person may request that the Patent Authority delete the registration in whole or in part. Such request shall only be made on the grounds that

- (i) registration has not been made according to sections 1 to 3 of this Act,

- (ii) registration relates to a creation which is not disclosed or shown in a manner sufficiently clear to enable a person skilled in the art to carry out the creation,
- (iii) the application has been amended contrary to section 11 of this Act, or
- (iv) the protection has been extended after registration.

(2) A request pursuant to subsection 1 hereof shall be submitted to the Patent Office and shall be accompanied by documentation in cases where the request is made on the ground that registration has not taken place pursuant to section 3 of this Act. If the request is made on the basis of the other circumstances as referred to under subsection 1 hereof, the Patent Authority may also demand documentation in order to be able to decide upon the request. A request shall be accompanied by a fee.

(3) Notwithstanding subsection 1, 1st clause, hereof any person shall be entitled, against payment of an increased fee, to request that the Patent Office, without specific documentation, examine whether the requirements in section 3 of this Act have been met.

### **35.**

If a request is made pursuant to section 34 of this Act, the proprietor of the utility model shall be notified accordingly and shall be given an opportunity to file his observations. The Minister of Business and Industry shall lay down specified rules in this respect.

### **36.**

(1) If, after submission of a request according to section 34 of this Act, the Patent Authority establishes any objections to registration, the registration shall be deleted. Deletion from registration shall be published by the Patent Office when the decision has become final.

(2) If there are no objections to the maintenance of the utility model registration as amended, the Patent Authority shall decide to amend the registration, if the proprietor of the utility model can accept the Patent Authority's amended formulation of the utility model registration, and if a fee for publication of notice of the amendment has been paid before expiry of the time limit fixed.

(3) If the proprietor of the utility model cannot accept the amended formulation or fails to pay the fee for publication of the amendment in

time, the utility model registration shall be regarded as having ceased to have effect.

(4) If the Patent Authority finds that the request will not result in deletion, in whole or in part, the request will be refused and the utility model registration will be maintained.

### **37.**

(1) An appeal from the final decision of the Patent Office concerning a utility model application may be filed by the applicant with the Patent Board of Appeal. The same shall apply to the proprietor of the utility model when a utility model registration is deleted in whole or in part on request under section 34 or ceases to have effect under section 36(3) of this Act. If the utility model registration is maintained amended or unamended despite of such request, the party making the request may appeal against the decision. If the latter withdraws his appeal, such appeal may nevertheless be examined when circumstances make it desirable.

(2) Appeals under subsection 1 hereof shall be filed with the Patent Board of Appeal not later than 2 months after the date on which the party concerned was notified of the decision by the Patent Office. The fee prescribed for the appeal shall be paid within the same time limit. Failure to pay shall result in rejection of the appeal as inadmissible.

(3) In respect of appeals from the decisions of the Patent Office made under section 29 of this Act, subsection 2 hereof shall apply mutatis mutandis. Other parties interested in the said decision may file a similar appeal not later than 2 months after the advertisement of the decision.

(4) The decisions of the Patent Board of Appeal may not be brought before any higher administrative authority.

(5) The decisions of the Patent Office which may be brought before the Patent Board of Appeal may not be brought before the courts of law before the Patent Board of Appeal has made its decision. If it is desired to bring a decision of the Patent Board of Appeal before the courts of law, proceedings shall be instituted not later than 2 months from the date on which when the party concerned was notified of the Patent Board of Appeal's decision.

## **Chapter VIII Obligation to give information about utility models**

### **38.**

Section 56 of the Patents Act relating to the obligation of a patent applicant to give information and section 62 of the same Act relating to liability to punishment and liability for damages, etc., in case of failure to comply with this obligation shall apply mutatis mutandis.

## **Chapter IX Liability to punishment, liability for damages, etc.**

### **39.**

(1) Intentional infringement of the exclusive right conferred by utility model registration shall be punished by a fine. Under aggravating circumstances, including in particular if by the infringement an appreciable or clearly wrongful gain is intended, the punishment may be increased to simple detention or imprisonment in up to 1 year.

(2) Companies etc. (legal entities) may be held criminally liable according to Part V of the Danish Penal Code.

(3) Proceedings shall be brought by the injured party in case of infringement. However, proceedings shall be brought at the request of the injured party in case of infringements under subsection 1, 2nd clause, hereof by the public authorities. The cases shall then be heard as proceedings instituted by the police, however, the remedies in Part 73 of the Danish Administration of Justice Act may be applied to the same extent as in the case of proceedings instituted by the Public Prosecutor.

### **40.**

Any person who infringes another person's exclusive right under this Act shall pay a reasonable compensation for the exploitation of the utility model as well as damages for the further injury which the infringement may have caused.

### **41.**

In the case of utility model infringement, the court may decide that the products infringed upon shall be destroyed, surrendered or altered. Section 59(2) of the Patents Act shall apply mutatis mutandis.

### **42.**

If any person exploits a creation commercially without permission after the files of the application have been made available to the public, and the application results in registration, section 41 of this Act shall apply mutatis mutandis.

### **43.**

Section 63 of the Patents Act relating to the notification of the institution of proceedings and deviation from venue shall apply mutatis mutandis.

**44.**

(1) Legal proceedings under this Act shall be brought before the High Court as the court of first instance. However, legal proceedings concerning compulsory licences shall be brought before the Maritime and Commercial Court in Copenhagen, cf. section 31 of this Act.

(2) Applicants and proprietors of utility models who are not residents of this country shall, in proceedings brought under this Act, be deemed to have their venue in Copenhagen.

(3) Office copies of court decisions relating to utility model applications or utility model registrations shall be communicated to the Patent Office on the initiative of the court.

## **Chapter X Miscellaneous provisions**

### **45.**

The Patent Office may on request perform special tasks relating to utility models and utility model law. The Minister of Business and Industry shall lay down rules governing that service and the payment therefor.

### **46.**

(1) The Minister of Business and Industry shall lay down rules concerning the Register of Utility Models and its arrangement, concerning the public's access to the Register and the advertisement of registrations as well as the publishing and contents of a publication concerning utility models. The publication shall be prepared by the Patent Office.

(2) The Minister of Business and Industry shall determine the amounts, etc., of the fees referred to in the Act.

(3) The Minister of Business and Industry may lay down rules concerning exchange of electronic data with the Patent Authority.

### **47.**

The Minister of Business and Industry may lay down rules to the effect that creations relating to methods may be registered as utility models.

### **48.**

If the Minister of Business and Industry transfers his authority under this Act to the Patent Office, the Minister may lay down rules concerning the right of appeal, including rules to the effect that appeals may not be brought before any higher administrative authority.

**49.-51.** (Not reproduced)

## **Chapter XI Provisions as to entry into force**

### **52.**

(1) This Act shall enter into force on 1 July 1992, cf. however subsection 2 hereof.

(2) The rule in section 6(1) shall only apply, if a patent application has been filed after the entry into force of the Act.

(3) Section 4(2) and section 33(2) to (4) shall enter into force at the same time as the Agreement relating to Community Patents. The Minister of Business and Industry shall draw up an order to that effect.

### **53.**

This Act shall not apply to the Faroe Islands and Greenland, but may be put into force by Royal Order with the deviations dictated by the special conditions in the Faroe Islands and Greenland.

Act No. 972 of 17 December 1997 the Patents Act, the Utility Models Act and the Designs Act contains the following provisions as to entry into force.

#### **"4.**

The Act shall enter into force on 1 July 1998.

#### **5.**

(1) The Act shall not apply to the Faroe Islands and Greenland.

(2) The Act may be put into force by Royal Order with the deviations dictated by the special conditions in the Faroe Islands and Greenland."