

ESTONIA

Utility Models Act

as amended by Act No. RT I 2004, 20, 141 of March 10, 2004

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Chapter I General Provisions

§ 1. Purpose of Act

This Act provides for the legal protection of inventions as utility models.
(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

§ 2. (Repealed)

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

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

The rights and obligations prescribed by legal acts concerning the legal protection of inventions as utility models apply, taking account of the restrictions provided for in this Act, equally to persons of the Republic of Estonia and of foreign states (hereinafter persons).

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

§ 4. (Repealed)

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

Chapter II Legal Protection and Patentability of Utility Models

§ 5. Legal protection of utility models

(1) Utility models are inventions which are new, which involve an inventive step and which are susceptible of industrial application.

(2) The following shall not be regarded as inventions:

- 1) industrial designs;
- 2) layout-designs of integrated circuits;
- 3) discoveries, scientific theories and mathematical methods;
- 4) schemes, rules and methods for performing mental acts or doing business;
- 5) design documentation for and plans of constructions, buildings or areas;
- 6) symbols;
- 7) algorithms for computers and computer programs;
- 8) presentations of information;
- 9) human bodies or parts thereof;
- 10) plant or animal varieties.

(3) An invention is granted legal protection upon registration in the register of utility models (hereinafter register).

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

(4) The scope of legal protection of a utility model is determined by the terms of the claims of the utility model.

(5) Equipment, processes and materials can be protected as utility models.

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

§ 6. Inventions not protected as utility models

(1) The following shall not be protected as utility models:

- 1) inventions which are contrary to public order and morality;
- 2) methods of treatment and diagnostic methods practised on the human or animal body;
- 3) biotechnological inventions.

(2) For the purposes of this Act, "biotechnological inventions" specified in clause (1)3) of this section mean:

- 1) inventions concerning biological materials or products which contain such materials;
- 2) inventions concerning the derivation or use of biological materials.

(3) For the purposes of this Act, "biological material" specified in subsection (2) of this section means any material, including micro-organisms, which contains genetic information and is capable of reproducing itself or being reproduced in a biological system.

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

§ 7. Novelty, inventive step and industrial application

(1) An invention shall be considered to be new if it does not form part of the state of the art. The state of the art shall be held to comprise everything made available to the public by means of written or oral description, by use, or in any other way, in any part of the world, before the filing date of the registration application of a utility model (hereinafter registration application) or before the date of priority if priority is claimed. In determining novelty, the content of registration applications published pursuant to § 33 of this Act and of patent applications published pursuant to § 24 of the Patents Act (RT I 1994, 25, 406; 1998, 74, 1227; 107, 1768; 1999, 84, 764; 2001, 27, 151; 93, 565; 2002, 53, 336; 2003, 18, 106; 2004, 20, 141) prior to the filing date of the registration application or the date of priority, if priority is claimed, shall also be taken into consideration if the filing dates or, if priority is claimed, the dates of priority of such applications are earlier.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

(2) In determining the state of the art, provided that a corresponding request is submitted, no such information relating to an invention is taken into consideration which is disclosed within twelve months before the filing date of a registration application or, if priority is claimed, before the date of priority, by a person who is entitled to the registration of a utility model pursuant to § 11 of this Act, or by any other person who has received the information from such person against or according to the will of the person. 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 registration of a utility model, the request may be filed in the course of the examination of the registration application or in case the utility model is contested. Evidence supporting the request shall be appended to the request.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

(3) For the purposes of this Act, an invention shall be considered as involving an inventive step if, having regard to the state of the art,

it is not obvious.

(4) A utility model shall be considered as susceptible to industrial application if it can be manufactured or used in economy.

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

§ 8. Unity of utility model

Legal protection of the utility model on the basis of one and the same registration application may be applied for one invention only.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

§ 9. Claims of utility model

(1) The claims of a utility model shall define the subject matter of the invention in words in a clear, concise and short manner.

(2) In claims, the subject matter of an invention shall be presented as a set of essential technical features.

(3) The claims of a utility model shall consist of an independent claim and dependent claims. The claims of a utility model may contain more than one independent claim only if the invention consists of several products grouped together and on the condition that the requirement of unity of the invention is complied with.

(4) The description and drawings of the invention shall be used to interpret the claims of the utility model. The abstract of the subject matter of an invention has no legal effect upon interpreting the claims of the utility model or in determining the legal protection of the utility model. The abstract shall merely serve for use upon disclosing technical information concerning the invention.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

§ 10. Priority

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

(2) If a registration application is filed with the Patent Office within twelve months after the filing date of the first registration application

or patent application, priority may be established:

1) on the basis of the filing date of the first registration application or patent application in any State party to the Paris Convention of the Protection of Industrial Property (RT II 1994, 4/5, 19) or member of the World Trade Organisation;

2) on the basis of the filing date of the first registration application or patent application in a state which is not a State party to the Paris Convention for the Protection of Industrial Property or in a state which is not member of the World Trade Organisation if such state guarantees equivalent conditions for first registration applications and patent applications filed in the Republic of Estonia.

(3) Priority may be established for a registration application filed with the Patent Office within twelve months by the same person for the same invention on the basis of the filing date of an earlier registration application or patent application, provided that the earlier registration application or patent application has not been published and priority has not been claimed on the basis thereof for some other registration application or patent application. If an earlier registration application is being processed, the earlier registration application is deemed to be withdrawn.

(4) If priority is claimed, priority may be established for a registration application on the basis of the filing dates of several registration applications or patent applications filed earlier. In the case of several registration applications or patent applications filed earlier, the twelve-month term specified in subsection (2) or (3) of this section shall be calculated as of the earliest date of priority.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

(5) (Repealed - 10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

(6) If priority is claimed, priority for a registration application filed with the Patent Office after expiry of the twelve-month term specified in subsection (2) or (3) of this section may be established on the basis of the filing date of a first registration application or patent application pursuant to subsection (2) or (3) if:

1) the reasons for the failure to comply with the abovementioned 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 registration application was filed within two months from the date
on which the abovementioned term expired.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

(7) In case of a registration application filed on the basis of a patent
application pursuant § 19 of this Act, the priority valid in respect of
the patent application or the corresponding part of the patent application
is retained for the registration application.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

Chapter III Right to Apply for Registration of Utility Models

§ 11. Right to utility model

(1) The right to apply for the registration of a utility model and to become the owner of the utility model is vested in the author of the invention and a successor or 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 the registration of a utility model and to become the owner of the utility model is vested in the author or another 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.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

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

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

(4) The right to apply for the registration of a utility model shall transfer to a legal successor.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

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

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

§ 12. Author of utility model

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

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

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

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

(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 the registration of a utility model and to become the owner of the utility model, unless they have entered into a written agreement which prescribes otherwise.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

(4) - (5) (Repealed - 09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

(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 utility model.

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

Chapter IV Rights to Utility Model

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

§ 13. Owner of utility model

(1) The owner of a utility model is the person in respect of whom the last entry as the owner of the utility model has been made in the register.

(2) Upon the registration of a utility model, the applicant for the registration of the utility model (hereinafter applicant) is entered in the register as the owner of the utility model.

(3) The owner of a utility model has the exclusive right to the invention protected as the utility model. Only the owner of a utility model has the right to exercise rights arising from the legal protection of the utility model and to prohibit other persons from exercising those rights.

(4) The owner of a utility model may transfer the rights of the owner of a utility model in full or in part to another person or surrender the rights or pledge the utility model pursuant to the procedure provided by this Act. The rights to a utility model may be transferred to a legal successor of the owner of the utility model, provided that the registration in the register is valid.

(5) The exclusive right of the owner of a utility model may only be restricted by this Act or the rights of other persons.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

§ 14. Exclusive right of owner of utility model

(1) The exclusive right of the owner of a utility model means that during the period of the protection of a utility model and without the permission of the owner of the utility model no person shall:

1) manufacture, use, distribute, sell or offer for sale products protected as utility models or acquire (including by importation) such products for the aforementioned purposes;

2) manufacture, sell or offer for sale components which form a significant part of the product protected as a utility model or acquire and export such components for the manufacture or preparation of the product, except if the components are other independent products;

3) use or offer for use to third persons a process protected as a utility model;

4) use, distribute, sell or offer for sale products manufactured by using

a process protected as a utility models or acquire (including by importation) such products for the aforementioned purposes.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

(2) In the case of products manufactured according to a process which is protected as a utility model, the manufacture, use, distribution, sale, offering for sale or acquisition (including by importation) for the aforementioned purposes of a similar product without the authorisation of the owner is considered an infringement of the exclusive right of the owner of the utility model unless it is proved that the similar product is manufactured according to a different process.

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

§ 15. Acts which do not constitute infringement of exclusive right of owner of utility model

The following acts do not constitute infringement of the exclusive right of the owner of a utility model:

1) the use of the utility model 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 utility model is used solely for the purposes of the ship;

2) the use of the utility model within the construction or auxiliary equipment of aircraft or land vehicles of other states, 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 utility model in testing related to the utility model itself;

4) the private non-commercial use of the utility model if such use does not harm the interests of the owner of the utility model.

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

§ 15-1. Exhaustion of rights

The owner of a utility model has no right to prohibit the acquisition (including by importation) or use, distribution, sale or offer for sale of a product which contains an invention protected as a utility a model when the product has been put on the market in the territory of the Republic of Estonia or a State party to the Agreement of the European Economic Area by the owner of the utility model or with the owner's consent.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

§ 16. Right of prior use

(1) A person who, prior to the filing of a registration application for an invention by another person, has, in good faith and independently of the person who files the registration application, 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 registration application for the invention was intended.

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

(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 in 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.

§ 16-1. Provisional protection

(1) An invention shall be granted provisional protection as of the filing date of a registration application until the date when the notice of entry of registration data is published in the official gazette of the Patent Office.

(2) A person who commences use of an invention during the period between the filing date of the registration application and the date when the notice of entry of registration data is published in the official gazette of the Patent Office is not deemed to infringe the exclusive right of the owner of the utility model unless the person knew or should have known that a registration application is filed with regard to the invention or the applicant notified the person in writing of the filing of the registration application.

(3) Persons whom an applicant notifies of the filing of the registration application shall be deemed, after the date when the notice of entry of registration data is published in the official gazette of the Patent Office, to infringe the exclusive right of the owner of the utility model as of the date of receipt of the notice concerning the filing of registration application unless such persons have the right of prior use pursuant to § 16 of this Act.

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

Chapter V Registration Application and Processing Thereof

§ 17. Registration application

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

- 1) registration application of a utility model which contains a request to register the utility model and information concerning the applicant and author and the name of the invention;
- 2) the description of the invention in which the invention must be disclosed in a sufficiently clear and concise manner which enables a person skilled in the art to make the invention;
- 3) the claims of the utility model;
- 4) the drawings referred to in the description of the invention or claims of the utility model;
- 5) an abstract of the subject matter of the invention.

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

- 1) an authorisation document if the registration application is filed via a patent agent;
- 2) documents certifying the priority claim, unless a specification specified in § 18-2 of this Act applies.

(3) If the applicant is not the author, the applicant shall declare, in the registration application of a utility model or another document annexed to the registration application, the legal basis of the right to apply for the registration of the utility model as specified in § 11 of this Act.

(4) The requirements for the content and format of the documents included in a registration application shall be established by the Minister of Economic Affairs and Communications. The Minister of Economic Affairs and Communications shall establish:

- 1) the structure of documents and information that each structural part must contain;
- 2) the data medium on which documents must be submitted;
- 3) national and international standards applied to documents and the format of information contained therein.

(5) Registration application shall be filed in Estonian.

(6) The Patent Office has the right to request the submission of the Estonian translation of any foreign language document included in a registration

application, document annexed to a registration application or document submitted in the course of processing within a term of two months, unless a different term is provided by this Act.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

§ 18. Filing of registration application

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

(2) A state fee for the filing of a registration application shall be paid within two months as of the filing date of the registration application. The term for payment of the state fee cannot be extended or restored.

(3) The procedure for filing registration applications shall be established by the Minister of Economic Affairs and Communications.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

§ 18-1. Representation in performance of procedures related to legal protection of utility model

(1) Procedures related to legal protection of utility models shall be performed in the Patent Office and in the Industrial Property Board of Appeal (hereinafter Board of Appeal) by interested persons or patent agents who are expressly authorised by the interested persons and who have been awarded patent agent qualifications for operation in the area of inventions pursuant to the Patent Agents Act (RT I 2001, 27, 151; 93, 565; 2002, 53, 336; 2003, 88, 594). An interested person or patent agent may involve, at own expense, an interpreter or adviser without the right of representation in oral proceedings in the Patent Office or in the Board of Appeal.

(2) A person whose residence or seat is not located in the Republic of Estonia shall authorise a patent agent as the person's representative for the performance of procedures related to legal protection of a utility model in the Patent Office and in the Board of Appeal, except filing of a registration application, filing of a request for acceptance of an international application for national processing specified in subsection 30(1) of this Act and payment of all the state fees specified in this Act.

(3) If procedures related to legal protection of a utility model are performed in the Patent Office or in the Board of Appeal by several persons together, they may authorise a patent agent 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 procedures related to the processing of a registration application in the name of the applicants, except transfer of the registration application.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

§ 18-2. Filing, correction or addition of priority claim

(1) A priority claim is filed upon filing of the registration application.

(2) Documents certifying the priority claim shall be filed together with the priority claim or within sixteen months as of the date of priority. Documents certifying the priority claim need not be submitted if priority is claimed on the basis of a first registration application or patent application in the Republic of Estonia.

(3) Translations of foreign language documents certifying the priority claim shall be submitted at the request of the Patent Office pursuant to the provisions of subsection 21(2) of this Act during the term determined by the Patent Office.

(4) A priority claim may be corrected or added until the Patent Office has, on the basis of the registration application, made a decision to register the utility model or to reject the registration application.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

§ 19. Registration application based on patent application

(1) A registration application may be filed on the basis of a patent application which concerns the same invention and is being processed by the Patent Office.

(2) A registration application cannot be filed later than within ten years as of the filing date of the patent application.

(3) (Repealed - 10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

§ 20. Establishing filing date of registration application and acceptance thereof for processing

(1) The Patent Office shall establish as the filing date of a registration application the date on which the Patent Office has received all of the

following elements in a set of documents:

- 1) request to register a utility model in Estonian or another express indication to the effect that the documents are intended to be a registration application of a utility model;
- 2) indications allowing the identity of the applicant to be established or allowing the applicant to be contacted by the Patent Office;
- 3) a document which on the face of it appears to be a description of the invention.

(2) Where, upon review of the documents received, the Patent Office finds that an element of the registration application of a utility model listed in subsection (1) of this section is missing from the set of documents, the Patent Office shall notify the person who filed the registration application accordingly and set a term for the elimination of deficiencies.

(3) The Patent Office does not have the obligation to give notice of deficiencies as specified in subsection (2) of this section if the missing element of the registration application is the information referred to in clause (1)2) of this section. In such case, the applicant must submit all the missing elements of the registration 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.

(4) In the case specified in subsection (2) of this section, the Patent Office shall establish the date on which the applicant has eliminated all the deficiencies in the initially submitted documents as listed by the Patent Office as the filing date of the registration application and, in the case specified in subsection (3) of this section, the Patent Office shall establish the date on which the applicant submitted all the missing elements of the registration application as listed in subsection (1) on the applicant's own initiative as the filing date of the registration application.

(5) Where the Patent Office finds that a part of the description of the invention appears to be missing from the set of the documents of the registration application, or that the claims of the utility model refer to a drawing which appears to be missing from the application (hereinafter missing part), the Patent Office shall promptly notify the applicant thereof. If the applicant wishes to add the missing part to the registration application, the applicant, whether notified by the Patent Office or not,

must file the missing part within two months from the filing date of the registration 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 registration application.

(6) If, within the term specified in subsection (5) 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 registration application pursuant to the provisions of subsection (1) of this section.

(7) Where both the provisions of subsection (4) and subsection (5) of this section apply to the establishment of the filing date of a registration application, the filing date of the registration application shall be the later date as established pursuant to the said provisions.

(8) The Patent Office shall not establish the filing date of a registration application if the applicant fails:

1) in the case specified in subsection (2) of this section, to eliminate any deficiencies listed in the notice of the Patent Office within the set term;

2) in the case specified in subsection (3) of this section, to file, on own initiative, all the elements of the registration 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.

(9) In case of a registration application filed on the basis of a patent application pursuant § 19 of this Act, the filing date of the patent application shall be the filing date of the registration application.

(10) The Patent Office shall accept a registration application for processing if the filing date of the registration application has been established.

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

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

§ 20-1. Refusal to accept registration application for processing

(1) The Patent Office shall refuse to accept a registration application

for processing if the filing date of the registration application is not established on the bases prescribed in subsection 20(8) of this Act.

(3) Upon the refusal to accept a registration application for processing, the applicant is notified thereof in writing. The applicant is entitled to a refund of the state fee paid by the applicant.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

§ 21. Processing of registration application

(1) In the course of processing a registration application, the Patent Office shall verify:

- 1) payment of the state fee specified in subsection 18(2) of this Act;
- 2) existence of the documents specified in subsections 17(1) and (2) of this Act;
- 3) compliance of the priority claim with the provisions of §§ 10 and 18-2 of this Act, if priority is claimed;
- 4) information on the author and compliance with the requirement to declare the legal basis of the right to apply for the utility model referred to in subsection 17(3) of this Act if the applicant is not the author;
- 5) the right of the patent agent to operate in the area of inventions, if the registration application is filed via a patent agent;
- 6) compliance of the registration application documents with the requirements for the content and format provided for in subsection 17(4) of this Act.

(2) If, by verification specified in subsection (1) of this section, it is ascertained that a document is missing from the registration application or deficiencies relating to the form or content of the documents exist, the Patent Office shall notify the applicant thereof in writing and set a term of two to four months for the elimination of deficiencies or provision of explanations.

(3) In justified cases, an applicant has the right to request the extension of a term set by the Patent Office for two months. The request for the extension of the term shall be filed with the Patent Office before the due date specified in subsection (2) of this section passes. The decision of the Patent Office regarding the grant of an extension of a term is final.

(4) If a registration application is in compliance with the provisions of subsection 5(2) and §§ 6 and 17 of this Act, the Patent Office shall

make a decision to register the utility model and notify the applicant thereof in writing. An entry of registration data is made on the basis of the decision.

(5) If a registration application is not in compliance with the provisions of subsection 5(2) or § 6 or § 17 of this Act or the applicant does not eliminate the formal or substantive deficiencies of the registration application documents or does not provide explanations, the Patent Office shall refuse to register the utility model, shall make a decision to reject the registration application and shall notify the applicant thereof in writing.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

§ 22. Suspension and resumption of processing of registration application

(1) Where an applicant fails to comply with a time limit fixed by the Patent Office, pursuant to this Act, for the performance of an act, the Patent Office shall suspend the processing of the registration application and notify the applicant thereof in writing.

(2) If documents certifying the priority claim have not been submitted together with the priority claim pursuant to subsection 18-2(2), the Patent Office shall suspend the processing of the registration application until the documents are submitted, however not for longer than sixteen months as of the date of priority.

(3) The processing of a registration application the processing of which was suspended pursuant to subsection (1) of this section is resumed if the applicant performs the act which was not performed and pays the state fee within two months as of the due date for the performance of the act.

(4) The processing of a registration application the processing of which was suspended pursuant to subsection (2) of this section is resumed if the applicant submits documents certifying the priority claim or, if the applicant has not submitted documents certifying the priority claim, after sixteen months as of the date of priority. In the last case mentioned, the Patent Office shall refuse to satisfy the priority claim and notify the applicant thereof in writing.

(5) The processing of a registration application may be suspended and resumed pursuant subsections (1) and (3) of this section only once.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

§ 23. Correction and supplementation of registration application

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

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

(2) Corrections and amendments are deemed to alter the subject matter of an invention if they contain essential features of the invention which were not included in the description of the invention, the claims of the utility model or the drawings on the filing date of the registration application.

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

(3) (Repealed - 09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

(4) During processing, the Patent Office may, without obtaining the approval of the applicant, only edit the documents of a registration application.

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

§ 24. Withdrawal of registration application

(1) An applicant may file a request for the withdrawal of a registration application and may withdraw a registration application which is being processed. Registration application documents are not returned.

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

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

(3) The Patent Office deems a registration application to be withdrawn:
1) if the Patent Office suspends the processing of a registration application pursuant to subsection 22(1) of this Act and the processing cannot be resumed pursuant to subsection 22(3) of this Act or suspended pursuant to subsection 22(5) of this Act;

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

2) if the applicant has not paid the prescribed state fee or, if the state fee is paid, has not submitted the document certifying payment of the state fee during the term of two months provided for in subsection 18(2)

of this Act;

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

3) in the case specified in subsection 10(3) of this Act.

§ 25. Termination of processing of registration application

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

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

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

§ 26. Resumption of processing of registration application

(1) An applicant may request resumption of the processing of a registration application if the Patent Office has terminated the processing of the registration application by having deemed the registration application to be withdrawn pursuant to clause 24(3)1) of this Act, provided that the failure to perform the acts occurred due to force majeure or some other impediment independent of the applicant or the patent agent representing the applicant.

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117; 10.03.2004 jõust. 01.05.2004 - RT I 2004, 20, 141)

(2) The Patent Office shall resume the processing of a registration application if the applicant proves the existence of an impediment and performs the prescribed acts within two months after the impediment ceases to exist, pays a state fee and submits the document certifying payment of the state fee within the specified term.

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

(3) A request for the resumption of the processing of a registration application may be filed within one year after the term for the act which was not performed.

(4) The provisions of subsections (1), (2) and (3) of this section do not extend to the provisions of subsection 34(4) of this Act.

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

§ 27. Filing appeals against decisions of Patent Office

(1) An applicant may file an appeal with the Board of Appeal or an administrative court against a decision of the Patent Office made on the

basis of this Act.

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

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

1) dismiss an appeal or;

2) require the Patent Office to annul its decision and to continue the proceedings 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.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

§ 28. Completion of processing of registration application

The processing of a registration application is completed by the registration of a utility model in the register or by the rejection of the registration application.

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

Chapter VI International Registration Application of Utility Model

§ 29. Definition of international registration application of utility model

(1) For the purposes of this Act, international registration application of a utility model (hereinafter international registration 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).

(29.01.2003 entered into force 01.04.2003 - RT I 2003, 18, 106)

(2) - (4) (Repealed - 09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

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

(6) International registration applications in which the Republic of Estonia is indicated as the designated state are deemed equal to registration applications filed pursuant to §§ 17 and 18 of this Act.

(7) An international registration 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 (hereinafter receiving office), as specified in the Patent Cooperation Treaty.

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

(8) (Repealed - 09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

§ 30. Specifications of processing of international registration applications

(1) For an international registration application to be accepted for national processing, an applicant shall file a corresponding request together with an Estonian translation of the international registration application with the Patent Office and pay a state fee not later than within thirty-one months as of the date of priority.

(29.01.2003 entered into force 01.04.2003 - RT I 2003, 18, 106)

(2) (Repealed - 29.01.2003 entered into force 01.04.2003 - RT I 2003, 18, 106)

(3) In justified cases and at the request of an applicant, the applicant may be granted an additional period for filing the translation of an international application specified in subsection (1) of this section, but for 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 date of the earliest date of priority. An additional period is not 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.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

(3-1) A utility model is not registered in the register before the international application is published pursuant to Article 21 of the Patent Cooperation Treaty, except in case twenty months have passed as of the date of priority.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

(3-2) If an international registration application is accepted for national processing, the procedure established on the basis of subsection 33(3-2) of the Patent Act applies.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

(4) - (5) (Repealed - 10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

(6) An international registration application shall lose the effect specified in subsections 29(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 § 18-1 of this Act.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

(6-1) An international registration 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;

3) the applicant has failed to comply with the requirements established on the basis of subsection (3-2) of this section.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

(7) - (9) (Repealed - 09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

(10) If the receiving office refuses to accept an international filing date or reports that an international registration 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 registration application in the Republic of Estonia and request that the International Bureau send a copy of the international registration application to the Patent Office. The applicant shall file a translation of the international registration application with the Patent Office and, in the cases prescribed, information concerning the patent agent, and pay a state fee during the term determined 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 registration application shall be reviewed as an international registration application.

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

(11) If the processing of an international registration 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 independent of the applicant, the Patent Office shall resume the processing of the international registration application in the Republic of Estonia, provided that the

applicant adheres to the provisions of subsections 26(2) and (3) of this Act.

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117; 29.01.2003 entered into force 01.04.2003 - RT I 2003, 18, 106)

Chapter VII Register of Utility Models

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

§ 31. Register of utility models

(1) The register of utility models (hereinafter register) is maintained on the basis of this Act and the Principles of Legal Regulation of Industrial Property Act (RT I 2003, 18, 98; 82, 555; 2004, 20, 141) and pursuant to the procedure provided for in the specified Acts.

(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. 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 the specified Acts or international agreements.

(3) The statutes of the official gazette of the Patent Office shall be established by the Minister of Economic Affairs and Communications. The title of the official gazette of the Patent Office is «Eesti Kasuliku Mudeli Leht».

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

§ 32. Registration of utility models in register

(1) If a registration application is accepted for processing, the number and filing date of the registration application and the receipt in the Patent Office of the documents submitted on the basis of § 17 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.

(2) In the course of processing a registration application, information and notices concerning the procedural acts performed pursuant to this Act, documents received and issued, terms provided for in this Act and terms established by the Patent Office shall be entered in the register.

(3) Upon grant of legal protection to a utility model, registration entry shall be made in the register.

(4) Registration entry shall be made pursuant to subsection 21(4) of this Act on the basis of a decision of the Patent Office to register the utility model or, in cases specified in § 27, pursuant to a decision of the Board of Appeal or a court judgment on the basis of a decision of the Patent Office to register the utility model. The applicant has the right to request the postponement of the registration entry, but not for more than eighteen months as of the date of priority. The request shall be filed upon filing the registration application.

(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;
- 6) the given name, surname and the address of the residence or seat of the enterprise of the owner of the utility model, and in the case of a legal person, the name, address of the seat and the country code;
- 7) the date of beginning of the period of validity of the registration;
- 8) the date of expiry of the registration;
- 9) in the case of a patent agent, the given name and surname of the patent agent;
- 10) in the case of a joint representative, the given name and surname of the joint representative, and in the case of a joint representative who is a legal person, the name of the legal person;
- 11) the number of the registration application;
- 12) the filing date of the registration application;
- 13) priority data (date of priority, country, application number);
- 14) the number and filing date of an earlier, continued registration application or patent application which is the basis for the filing of the registration application;
- 15) international application or European patent application data;
- 16) the date of disclosure of information specified in subsection 7(2) of this Act;
- 17) the claims of the utility model;
- 18) the description of the invention;
- 19) the drawing.

(6) The applicant specified in subsection (4) of this section is entered in the register as the owner of the utility model.

(7) After the entry of registration data in the register, the Patent Office prepares a specification of the utility model. The requirements for the format and the procedure for completion of the specification of a utility model shall be established by the Minister of Economic Affairs and Communications.

(8) After the entry of registration data in the register, the Patent Office publishes in its official gazette a notice of the registration of the utility model and the description of the utility model. The publication date of the notice shall be entered in the register.

(9) A registration shall enter into force on the publication date of a notice of the registration of the utility model in the official gazette of the Patent Office.

(10) After the notice of the registration of the utility model is published, the Patent Office shall issue the owner of the utility model a utility certificate which contains the specification of the utility model.

(11) Only one utility certificate is issued regardless of the number of owners of the utility model.

(12) The requirements for the format and the procedure for completion and issue of utility certificates shall be established by the Minister of Economic Affairs and Communications.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

§ 33. Access to and release of data from register

(1) The register is public. Everyone has the right, as of the date of publication of the notice of the registration of a utility model, to examine the registry file concerning a registration application and data entered in the database record taking account of the restrictions provided for in this Act, including the author's right to prohibit the disclosure of the author's name. The publication date of the specified notice shall be the date of the publication of the registration application.

(2) In order to have access to a registry file or to be issued 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, owners of utility models and authors have access to the registry files concerning their utility models

free of charge.

(3) At the written request of an applicant or owner of a utility model 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 registration application and the official confirmation by the Patent Office. The requirements for the format and procedure for the completion of documents certifying priority shall be established by the Minister of Economic Affairs and Communications.

(4) The procedure for access to the register and release of information from the register shall be established by the Minister of Economic Affairs and Communications.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

Chapter VIII Validity of Legal protection of Utility Models

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

§ 34. Period of validity of registration

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

(2) The period of validity of a registration may be extended on the basis of an application of the owner of a utility model initially for four years and thereafter for another two years.

(3) A registration becomes prematurely invalid if the owner of the utility model files an application for the termination of the validity of the registration.

(4) A state fee is paid for the extension of validity of a registration:
1) within six months before the date of expiry of the validity of the registration, or,
2) upon payment of additional state fee, within six months as of the date of expiry of the validity of the registration.

(5) A state fee is deemed to be paid if the Patent Office receives a document certifying payment of the state fee.

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

§ 35. (Repealed)

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

§ 36. Amendments to utility models

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

(1) The owner of a utility model may restrict the scope of legal protection during the entire period of the validity of the registration without altering the subject matter of the invention by amending the claims of the utility model, and may correct any bibliographical data and obvious spelling and calculation mistakes in the specification of the utility model. A request for making amendments and new claims of the utility model and, if necessary, new description of the invention shall be filed with the Patent Office and a state fee prescribed by subsection (2) of this section shall be paid. The Patent Office shall, on its own initiative or upon request from the owner of a utility model, correct its own mistakes without charge.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

(2) If a request for amendments is made, a state fee shall be paid for publication of the notice of the amendment of the specification of the utility model in the case of correction of bibliographical data and spelling and calculation mistakes, and a state fee shall be paid for the publication of a notice concerning the amendment to the claims of the utility model and publication of a new specification of the utility model in the case of restricting the scope of legal protection.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

(2-1) The Patent Office shall publish a notice of making amendments to a utility model in the official gazette of the Patent Office. If the scope of legal protection is restricted, also the new specification of the utility model shall be published.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

(3) The owner of a utility model may file a request with the Patent Office for the making of amendments to correct obvious spelling mistakes and calculation errors which restrict the scope of legal protection of the utility model within one year after the publication of the notice concerning entry of registration data.

(4) The extension of the scope of legal protection of a utility model caused by amendments made on the basis of subsection (3) of this section shall not restrict the rights of persons who had, prior to the publication of the notice concerning the making of amendments to the registration of the utility model, taken into consideration the initial scope of legal protection of the utility model in their economic and commercial activities.

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

Chapter IX (Repealed)

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

Chapter X Transfer of Rights to Utility Model

§ 40. Transfer of right to apply for registration of utility model

(1) The transfer of the right to apply for the registration of a utility model from the author to another person shall be performed on the basis of a separate written agreement or pursuant to a contract or employment contract as provided for in subsection 11(2) of this Act. The specified agreement or contract shall contain provisions which ensure, pursuant to subsection 12(8), the right of the author to receive fair proceeds from the profit received from the invention during the entire period of validity of the registration.

(2) Upon the transfer of the right to apply for the registration of a utility model on the basis of law, the law of the country of the residence or seat of the applicant applies.

(3) The legal basis of the transfer of the right to apply for the registration of a utility model pursuant to subsection (1) or (2) of this section and information concerning the author shall be indicated in the registration 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 the registration of a utility model and the authorship of the invention.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

§ 41. Transfer of registration application

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

(2) In the event of the death of an applicant or dissolution of an applicant who is a legal person, a registration application which is being processed by the Patent Office shall transfer to a successor or a legal successor.

(3) In order to amend the applicant's data in the entry of registration data, the applicant or the person to whom the registration application is transferred shall file a corresponding application and a document certifying payment of the state fee with the Patent Office. If the application is filed by the person to whom the registration application is transferred, the person shall annex the document certifying the transfer or a certified copy thereof to the application.

(4) A registration application is deemed to be transferred to another person as of the date on which the entry to amend the registration application data entry is made.

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

§ 42. Transfer of utility model

(1) The owner of a utility model may transfer the utility model to another person.

(2) In the event of the death of the owner of a utility model or dissolution of an owner who is a legal person, the utility model shall transfer to a successor or a legal successor.

(3) In order to amend the data concerning the owner of a utility model in the entry of registration data, the owner of the utility model or the person to whom the utility model is transferred shall file a corresponding request and a document certifying payment of the state fee with the Patent Office. If the request is filed by the person to whom the utility model is transferred, the person shall add to the request the document certifying the transfer or a certified copy thereof. In case of transfer of a utility model encumbered with a registered security over movables, the written consent of the pledgee shall be appended to the request.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

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

(5) A utility model is deemed to be transferred to another person as of the date of transfer of the utility model determined by the transaction or court judgment or the date of creation of legal succession.

(6) A person to whom a utility model is transferred pursuant to the provisions of this section may commence use of the rights of the owner of the utility model as of the date on which the entry to amend the registration data becomes valid. A registry entry becomes valid on the date on which it is made. A registry entry shall have legal effect with regard to a third

person as of the date on which a notice of the making of the registry entry is published in the official gazette of the Patent Office.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

§ 43. Licence

(1) The owner of a utility model (licensor) may, pursuant to a written licence agreement, grant the use of the rights of the owner of the utility model listed in subsection 14(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 the registration.

(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 the making of 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.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

(5) Upon transfer of a utility model to another person in the cases provided for in § 42 of this Act, the rights and obligations deriving from the licence are also transferred to the said person.

(29.01.2003 entered into force 01.04.2003 - RT I 2003, 18, 106)

§ 44. (Repealed)

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

Chapter XI Contestation and Protection of Rights to Utility Model

§ 45. Contestation of authorship

(1) Disputes concerning authorship are resolved in court after the registration of a utility model.

(2) Any person who finds that he or she is, pursuant to subsection 12(1) or (2) of this Act, the author or joint author of a utility model, may file an action in court against the owner of the utility model for certification of his or her authorship.

(3) Authorship may be contested by the author or a successor of the author.
(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

(4) If authorship is certified, the person may, on the basis of § 11 of this Act, contest the owner of the utility model pursuant to subsection 46(1) of this Act in the course of the same case.
(29.01.2003 entered into force 01.04.2003 - RT I 2003, 18, 106)

§ 46. Contestation of owner of utility model

(1) Any person who finds that the right to a utility model belongs to the person on the basis of § 11 of this Act may file an action in court against the owner of the utility model for recognition of the person's rights. If the action is satisfied, the person has the right to:

- 1) register the utility model in the person's name,
- 2) revoke the registration and file a new registration application with the same filing date concerning the same invention, or
- 3) revoke the registration.

(29.01.2003 entered into force 01.04.2003 - RT I 2003, 18, 106)

(2) A request stating a choice made pursuant to subsection (1) of this section together with a copy of the court judgment which has entered into force and, in the prescribed cases, a document certifying payment of the state fee shall be filed with the Patent Office within one month after entry into force of the court judgment. Upon filing a new registration application, the person must file the documents of the new registration application in accordance with the provisions of § 17 of this Act with the Patent Office within three months from the date of the court judgment which has entered into force. Upon failure to comply with the abovementioned requirements, the registration shall be revoked.

(29.01.2003 entered into force 01.04.2003 - RT I 2003, 18, 106)

(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 utility model, provided that the invention shall be used for the same purposes.

(29.01.2003 entered into force 01.04.2003 - RT I 2003, 18, 106)

(4) - (5) (Repealed - 29.01.2003 entered into force 01.04.2003 - RT I 2003, 18, 106)

§ 47. Contestation of utility model

(1) Any person who finds that a registered utility model does not comply with the provisions of §§ 5 - 9 of this Act or the invention does not correspond to the subject matter of the invention as disclosed in the initial registration application, may file an action in court against the owner of the utility model for the revocation of the registration.

(2) An action specified in subsection (1) of this section may be filed even after the registration has expired.

(3) If a registration is revoked, the Patent Office shall delete the registration entry if the owner of the utility model or a person specified in subsection (1) of this section files an application accompanied by a copy of the court judgment which has entered into force with the Patent Office.

(29.01.2003 entered into force 01.04.2003 - RT I 2003, 18, 106)

(4) The revocation of a registration shall not be a basis for the annulment of a court judgment made concerning the protection of the exclusive right of the owner of the utility model or cancellation of a contract, including a licence agreement, before the court judgment on the revocation of the registration enters into force. If the performance of the contract is continued, one party has the right to require the other party to change the payments or make recalculations.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

§ 48. Protection of rights of author

(1) The author of a utility model may file, without a limitation period, an action in court upon infringement of the rights provided for in subsection 12(7) of this Act and for the resolution of other non-proprietary disputes

deriving from authorship.

(2) (Repealed - 05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

§ 49. Protection of rights of applicants

(1) Pursuant to § 27 of this Act, an applicant may file an appeal with the Board of Appeal against a decision of the Patent Office or may, within two months as of the date of the decision, file an action with an administrative court.

(2) Upon disagreement with a decision of the Board of Appeal, an applicant may contest the decision by filing an action with an administrative court within three months as of the date on which the decision is made public. (10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

§ 50. Protection of rights of owner of utility model

(1) In the case of unlawful use of a utility model, the owner of the utility model may request:

1) compensation for damage caused by unlawful use of the utility model pursuant to § 1043 of the Law of Obligations Act;

2) the transfer of that which is received as a result of the unlawful use of the utility model pursuant to §§ 1037 and 1039 of the Law of Obligations Act;

3) termination of the unlawful use of the utility model and refraining from further violation pursuant to § 1055 of the Law of Obligations Act. (10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

(2) (Repealed - 19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

(3) A person who infringes the exclusive right of the owner of a utility model by a wrongful act and causes the owner proprietary damage is required to compensate for the damage. Upon use of a utility model in good faith, a court may order a compensation which does not exceed the extent of damage caused within five years before the filing of the action.

(4) The owner of a utility model has the right to file an action within three years as of the time when the owner learns who the person is who has infringed the exclusive right.

(5) Upon infringement of the exclusive right which took place prior to the publication of the notice of entry of registration data, an action shall be filed during the term specified in subsection (4) of this section or within one year as of the date of the publication of the notice of entry concerning registration data; the term which ends later shall apply. (09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

§ 51. Protection of rights of other persons

(1) A person who uses an invention in good faith before a registration application is filed may file an action in court against the owner of the utility model for certification of the person's right of prior use.

(2) A licensee may file an action in court for resolution of a dispute related to the licence.

(3) A licensee may also file an action upon infringement of the exclusive right of the owner of a utility model by other persons, unless otherwise prescribed upon the grant of licence. The licensee shall notify the owner of a utility model 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 owner of the utility model by registered mail to the address indicated in the licence agreement or the address entered in the register. (10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

(4) Any person may, upon doubt that the person's activities may infringe the exclusive right of the owner of a utility model, file an action in court against the owner of the utility model to certify that the existence of the utility model does not hinder the person's economic or professional activities.

(5) Any person against whom an action has been filed on the basis of § 50 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 owner of a utility model, has the right, pursuant to subsection 47(1) of this Act, to file an action in court against the owner of the utility model for the revocation of the registration. During the proceedings in respect of the action for the revocation of the registration, proceedings in respect of the action concerning the infringement of the exclusive right of the owner of the utility model, misdemeanour or criminal offence shall be suspended. (29.01.2003 entered into force 01.04.2003 - RT I 2003, 18, 106)

§ 52. Procedure for hearing of disputes related to utility models

(1) In the cases provided by law, disputes related to utility models shall be heard by the Board of Appeal or in court.

(2) Actions referred to in §§ 45 - 48, subsections 51(1), (2), (4) and (5) of this Act and appeals referred to in § 49 of this Act fall within the competence of the court in the jurisdiction of which the Patent Office is located. Actions referred to in § 50 and subsection 51(3) and § 52-1 fall within the competence of the county or city 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 or city court in the jurisdiction of which the offence occurred.

(29.01.2003 entered into force 01.04.2003 - RT I 2003, 18, 106)

(3) Courts shall hear disputes related to utility models pursuant to the procedure provided for in the Code of Civil Procedure (RT I 1998, 43/45, 666; 108/109, 1783; 1999, 16, 271; 31, 425; 2000, 51, 319; 55, 365; 2001, 21, 113; 34, 186; 53, 313; 93, 565; 2002, 29, 174; 50, 313; 53, 336; 64, 390; 92, 529; 2003, 13, 64; 67; 23, 140; 2004, 30, 208), taking into consideration the specifications established in this Act.

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

(4) A court may refuse to hear a statement of claim if it only concerns a complaint which is subject to resolution by the Board of Appeal pursuant to this Act and the complaint has not been reviewed by the Board of Appeal.

(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 by the statutes of the Board of Appeal.

§ 52-1. Burden of proof

(1) If an action is filed on the basis of the provisions of subsection 14(2) of this Act, the defendant is required to prove that the defendant used a process different from the process protected as a utility model 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 process protected as a utility model provided that, in spite of reasonable efforts, the

owner of the utility model has not succeeded in determining the process actually used for manufacturing the product and the use of the process protected as a utility model is likely or if the product manufactured according to the process protected as a utility model 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.

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

§ 53. Acts of court upon filing of statement of claim

(1) In the case of an action specified in subsection 51(4) of this Act, a copy of the notice sent to the owner of a utility model 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 determine a term for the plaintiff for the performance of the obligation to notify.

(2) A court may order, at the request of the plaintiff, that the products or objects protected as utility models and manufactured without the permission of the owner of the utility model, the use of which infringes the exclusive right of the owner of the utility model, shall be removed from circulation for the time of hearing the action filed for termination of an infringement of the exclusive right. If necessary, the court may demand a security from the plaintiff for compensating for the damage to the defendant upon dismissal of the action.

(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 owner of the utility model during the entire or a part of the remaining time of the period of validity of the registration.

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

§ 54. Participation of Patent Office

(1) If an appeal against a decision of the Board of Appeal is filed with an administrative court, the Patent Office has the right to participate in the proceedings as a third party.

(10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

(2) A court shall send a copy of the court judgment made in a dispute related to a utility model to the Patent Office for its information even

if the Patent Office has not participated in the proceedings.

**§ 55. Representatives in resolution of disputes in field of utility models
in court**

(1) In resolution of disputes related to utility models, patent agents may act as representatives in court.

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

(2) - (3) (Repealed - 10.03.2004 entered into force 01.05.2004 - RT I 2004, 20, 141)

Chapter XII Registration of Utility Models in Foreign States

§ 56. Registration procedure

(1) Persons whose residence or seat is in the Republic of Estonia may register their utility models in foreign states regardless of the registration thereof in the Republic of Estonia.

(2) Persons whose residence or seat is in the Republic of Estonia are responsible for the registration of their utility models in foreign states in accordance with the law of the foreign state and international conventions.

§ 57. (Repealed)

(09.02.2000 entered into force 01.07.2000 - RT I 2000, 19, 117)

Chapter XIII Implementation of Act

§ 58. Entry into force of the Act

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

(2) The provisions of clause 10(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 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) The basis for establishing priority indicated in subsections 10(2) and (3) of this Act may only be patent applications and registration applications filed after the entry into force of this Act.