

**SWEDEN**

**Patent Act**

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## **Chapter 1 General Provisions**

### **Section 1**

Anyone who has made an invention which is susceptible of industrial application, or his successor in title, is entitled pursuant to Chapters 1 to 10 of this Act to obtain, upon application, a patent for the invention in this country and thereby acquire an exclusive right to exploit the invention commercially. Provisions concerning European patents are given in Chapter 11.

The following shall never be regarded as an invention: that which is merely

- (1) a discovery, scientific theory or mathematical method;
- (2) an aesthetic creation;
- (3) a scheme, rule or method for performing mental acts, for playing games or for doing business, or a program for computers;
- (4) a presentation of information.

Methods for surgical or therapeutic treatment or diagnostic methods, practiced on humans or animals, shall also not be regarded as inventions. This provision does not, however, prevent the granting of patents for products, including substances and compositions of substances, for use in methods of this type.

Patents shall not be granted for

- (1) inventions the use of which would be contrary to morality or public order;
- (2) plant or animal varieties or essentially biological processes for the production of plants or animals; patents may, however, be granted for microbiological processes and products resulting from such processes.

### **Section 2**

Patents are only granted for inventions which are new in relation to what was known before the filing date of the patent application and which also differ essentially therefrom.

Everything made available to the public in writing, in lectures, by public use or otherwise shall be considered as known. Also the contents of a patent application filed in this country before said filing date shall be considered as known if that application becomes available to the public pursuant to Section 22. The condition in the first paragraph that the invention must differ essentially from what was known before the filing date of the patent application does not, however, apply in respect of the contents of such

application.

Provisions stating that, when applying the second paragraph, an application referred to in Chapter III or XI in certain cases has the same effect as a patent application filed in this country, are to be found in Sections 29, 38 and 87.

The stipulation in the first paragraph that the invention shall be new does not prevent the granting of a patent for a known substance or a known composition of substances for use in a method referred to in Section 1, third paragraph, provided the use of the substance or composition is not known in methods of this type.

A patent may be granted despite the fact that the invention was made available to the public within six months prior to the filing of the application,

- (1) in consequence of evident abuse in relation to the applicant or his predecessor in title, or
- (2) because the invention was displayed by the applicant or his predecessor in title at an official, or officially recognized, international exhibition falling within the terms of the Convention on International Exhibitions signed at Paris on November 22, 1928.

### **Section 3**

The exclusive right conferred by a patent implies, with the exceptions stated below, that no one may, without the proprietor's consent, use the invention by

- (1) making, offering, putting on the market or using a product protected by the patent or importing or possessing such product for these purposes;
- (2) using a process which is protected by the patent or, while knowing, or it being obvious from the circumstances that the use of the process is prohibited without the consent of the proprietor of the patent, offering the process for use here in Sweden;
- (3) offering, putting on the market, or using products made by a process protected by the patent or importing or possessing the product for these purposes.

The exclusive right also implies that no one may, without the consent of the proprietor of the patent, exploit the invention by offering or supplying a person who is not entitled to exploit the invention with such means for

carrying out the invention here in Sweden which relate to an essential element of the invention, if the person offering or supplying the means knows, or it is obvious from the circumstances, that said means are suited and intended for use in carrying out the invention. If the means are a generally available commercial product, this paragraph only applies if the person offering or supplying the means attempts to induce the receiver to commit acts referred to in the first paragraph. In applying the provisions of this paragraph, persons using the invention in a manner specified in the third paragraph, point (1), (3) or (4), shall not be considered as entitled to exploit the invention.

The following are excepted from the exclusive right:

- (1) use which is not commercial;
- (2) use of a product protected by the patent which is put on the market within the European Economic Area by the proprietor of the patent or with his consent;
- (3) use of the invention for experiments which relate to the invention itself;
- (4) preparation in a pharmacy of a medicine in accordance with a physician's prescription in individual cases or acts with the medicine so prepared.

#### **Section 4**

Anyone who, at the time when the application for a patent was filed, was using the invention commercially in this country may, notwithstanding the patent, continue such use while retaining its general character, provided the use did not constitute evident abuse in relation to the applicant or his predecessor in title. Such right of use shall also be due on corresponding conditions to anyone who had made substantial preparations for commercial use of the invention in this country.

The right according to the preceding paragraph can only be passed to others together with the business in which it originated or in which the use was intended to take place.

#### **Section 5**

Notwithstanding the grant of a patent, an invention may be utilized on a foreign vessel, aircraft, or other foreign means of communication for its own needs when temporarily entering this country in regular traffic or otherwise.

The Government may decree that, notwithstanding the grant of a patent, spare parts and accessories for aircraft may be imported into this country and

used here for the repair of aircraft of a foreign country in which corresponding privileges are granted to Swedish aircraft.

#### **Section 6**

An application for a patent on an invention, which has, within twelve months before the date of the application, been included in an earlier application for a patent in Sweden, shall, for the purposes of the application of Section 2, first, second and fourth paragraphs, and Section 4, be deemed to have been filed simultaneously with the earlier application, where the applicant so requests (priority). The same applies in respect of an application for a patent on an invention which has, within twelve months before the date of the application, been included in an earlier application for a patent, an inventors' certificate or protection of a utility model either in a foreign State party to the Paris Convention of March 20, 1883, for the Protection of Industrial Property, or in a State or a Territory which is party to the Agreement Establishing the World Trade Organization (WTO). Such priority may be enjoyed also from an application for protection relating to any other State or any other Territory where a corresponding priority from a Swedish patent application is accorded where the earlier application was filed and where the legislation in force there essentially corresponds to the Paris Convention.

#### **Section 6a**

The applicant shall request priority within three months from the date when the application was filed or shall be deemed to have been filed. The applicant shall in this context provide information on where and when the application was filed to which reference is made. The applicant shall also, as soon as possible, indicate the number of the earlier application.

In the case of an international patent application according to Chapter 3, priority shall be requested within four months from the international filing date. The applicant shall in this context provide information on where and when the application was filed to which reference is made and, in the case of an international patent application, with which Receiving Authority it was filed. Furthermore, the applicant shall, within sixteen months from the date from which priority is requested, provide information to the Receiving Authority for the international patent application or to the International Bureau indicated in Section 35 about the number of the application to which reference was made.

If an application is divided according to Section 11 of this Act and Section

22 of the Patent Decree (1967:838) a request for priority relating to the original application shall without any special request apply also to any new application that emerges from the division.

#### **Section 6b**

An applicant who has requested priority shall within sixteen months from the date from which priority is requested file with the Patent Authority the following documents relating to the earlier application:

1. a certificate concerning the name of the applicant and to the filing date, issued by the Authority which received the application;
2. a copy of the application certified by the same Authority.

#### **Section 6c**

In the case of an international patent application according to Chapter 3, the provisions of the second to fourth paragraphs apply as regards the obligations of an applicant according to Section 6b.

The applicant shall file the certificate referred to in Section 6b.1 only if the Patent Authority requests the applicant to do so.

Instead, the applicant may, according to Rule 17.1 in the Implementing Regulations to the Patent Cooperation Treaty done at Washington on June 19, 1970, file the copy of the earlier application with the International Bureau mentioned in Section 35 or with the Receiving Authority, or request it to be transferred to the International Bureau according to the same Rule.

If a copy of the earlier application has been received by the International Bureau in accordance with the Rule referred to in the third paragraph, the Patent Authority may request a copy and a translation only in accordance with Rule 17.2 of the Implementing Regulations referred to in the third paragraph.

#### **Section 6d**

Priority may be claimed only on the basis of the first application where the invention has been included.

If the person who has filed the first application or his or her successor in title has later with the same Authority filed an application concerning the same invention, only the later application may be claimed as a basis

for priority. This applies, however, only if the earlier application, when the later application is filed

1. has been withdrawn, dismissed or rejected without having been made available to the public; and
2. does not leave behind any right based on it or has been the basis for any right to priority.

Where anyone has been granted a right to priority on the basis of a later application according to the second paragraph, the earlier application may no longer form the basis for a claim for priority.

The second and third paragraphs apply in the same way in respect of a patent application for which the date has been shifted in accordance with Section 14.

#### **Section 6e**

An applicant may be granted priority in respect of a part of an application.

Priority may in respect of one and the same application be claimed on the basis of several earlier applications. This applies also if the earlier applications concern different countries.

#### **Section 6f**

The Government or, following an authorization by the Government, the Patent Authority may prescribe exceptions in certain cases from the obligation provided for in Sections 6b and 6c to file certificates and copies.

#### **Section 6g**

If the provisions in Sections 6a to 6e are not complied with, the right to priority does not apply.

## **Chapter 2 The Processing of Swedish Patent Cases**

### **Section 7**

The Patent Authority in this Act refers to the Patent Authority in this country unless otherwise stated. The Patent Authority in this country is the Patent and Registration Office.

### **Section 8**

An application for a patent shall be filed with the Patent Authority or, in the case provided for in Chapter 3, with the Patent Authority in a foreign State or with an International Organization.

The application shall contain a description of the invention comprising also drawings if such are necessary as well as specified information about what is claimed to be protected through the patent (patent claims). The fact that the invention relates to a chemical compound does not imply that a specified use has to be indicated in the patent claims. The description shall be sufficiently clear so that a person skilled in the art is able to carry out the invention with the guidance thereof. An invention relating to a microbiological process or the product of such a process shall in the cases referred to in Section 8a be considered to be indicated in a sufficiently clear way only if also the requirements under that Section are fulfilled.

The application shall also contain an abstract of the description and the patent claims. The abstract shall only serve as technical information and may not be taken into account for any other purpose.

The inventor's name shall be indicated in the application. If a patent is claimed by anyone other than the inventor, the applicant shall prove his right to the invention.

The applicant shall also pay an application fee. The applicant shall furthermore pay an annual fee for each fee year commencing before the application has been finally decided on.

The fee year comprises one year and shall be calculated from the date when the application was filed or shall be deemed to have been filed and thereafter from the corresponding date according to the calendar.

### **Section 8a**

If in the carrying out of an invention a microorganism is to be used which

is neither available to the public nor can be described in the application documents so as to enable a person skilled in the art to carry out the invention with the guidance thereof, a culture of the organism shall be deposited no later than the date of filing of the application. The culture shall thereafter be continuously on deposit so that he who is entitled under this Act to receive samples from the culture, can receive his sample delivered in Sweden. The Government specifies where deposits may be made.

If a deposited culture ceases to be viable or if samples from the culture cannot be supplied for other reasons, it may be replaced by a new culture of the same organism within the time period and otherwise in the manner prescribed by the Government. If this has been done, the new deposit shall be considered as having been made on the day when the earlier deposit was made.

#### **Section 9**

If the applicant so demands and pays the special fee, the Patent Authority, under those conditions determined by the Government, shall allow the application to become subject to such novelty search by an International Searching Authority as referred to in Article 15(5) of the Patent Cooperation Treaty done at Washington on June 19, 1970.

#### **Section 10**

Patents for two or more mutually independent inventions may not be applied for in a single application.

#### **Section 11**

If a patent is sought for an invention disclosed in a patent application filed earlier by the applicant and not finally decided upon, the later application shall, on conditions laid down by the Government, be regarded as filed at the time when the documents disclosing the invention were filed with the Patent Authority, if the applicant so demands.

#### **Section 12**

The Patent Authority may request an applicant who does not have his domicile in Sweden to appoint a representative who shall be entitled to receive communications served in the case and who has his domicile in Sweden, and to notify the Authority about the representative. If the applicant disregards the order, the serving of communications may be effected through the transmission by mail to the applicant under his latest known mailing address. The serving shall be deemed to have been effected when this has been done.

**Section 13**

The application for a patent must not be amended so as to claim protection for subject matter which did not appear in the application at the time when it was filed, or shall be considered to have been filed pursuant to Section 14.

**Section 14**

If the applicant amends the application within six months from the date of filing, the application shall be considered to have been filed at the time when the amendment was made, if the applicant so requests.

A request under the first paragraph must be made within two years from the date of filing of the application. Such a request can be made only once and cannot be withdrawn.

**Section 15**

If the applicant has not complied with the requirements regarding the application, or if the Patent Authority finds other obstacles to the allowance of the application, the applicant shall be notified thereof and be requested within a specified term to render a statement or to make corrections. The Patent Authority may, however, without consulting the applicant, make such changes in the abstract as it deems necessary.

If the applicant fails, within the stipulated term, to render a statement or to take measures to overcome the objections raised, the application shall be dismissed. Notice of this shall be given in the official action.

A dismissed application will be reinstated if, within four months from the expiration of the specified term, the applicant submits a statement or takes measures to overcome the objections and, within the same term, pays the prescribed resuming fee.

If the applicant does not pay the annual fee according to Sections 8, 41 and 42, the application shall be dismissed without a preceding action. Such a dismissed application cannot be reinstated.

**Section 16**

If, after the applicant has submitted his statement, there are still obstacles to the allowance of the application, and the applicant has had an opportunity to submit a statement on the obstacles, the application shall be rejected,

unless there are found reasons to give the application another official action.

#### **Section 17**

If anybody claims before the Patent Authority that the proper title to the invention rests with him and not with the applicant, and if the case is deemed uncertain, the Patent Authority may direct him to bring action before a court of law within a certain time at the risk of the claim being disregarded in the further examination of the patent application.

If a litigation regarding the proper title to the invention is pending before the court, the patent application may be declared in abeyance until the litigation is finally settled by the court.

#### **Section 18**

If anybody proves to the satisfaction of the Patent Authority that the proper title to the invention rests with him and not with the applicant, the Patent Authority shall transfer the application to him, if he so requests. The transferee shall pay a new application fee.

If a request for transfer has been made, the application may not be dismissed, rejected or allowed until the request has been finally decided upon.

#### **Section 19**

If the application is complete and no obstacles to a patent are found, the Patent Authority shall notify the applicant that a patent can be granted.

Within two months of the date of notification, the applicant shall pay a fixed grant fee. In default of this, the application shall be dismissed. The processing of a dismissed application shall be resumed if, within four months after the expiration of the two months, the applicant pays the grant fee and a fixed resuming fee.

If a patent is sought by an inventor who has considerable difficulty in paying the grant fee, the Patent Authority may exempt him from this obligation if he makes a written request to that effect within two months of the date of notification. If the Patent Authority rejects the inventor's request, a fee paid within two months thereafter shall be considered as being paid within the proper time limit.

#### **Section 20**

If the applicant has fulfilled the requirements of Section 19 and there is

still no obstacle to a patent, the Patent Authority shall grant the application. The decision shall be announced.

When the decision to grant the patent application has been announced, a patent has been granted. A granted patent shall be recorded in the Register of Patents kept by the Patent Authority. Letters patent shall also be issued. After the patent has been granted, the claims may not be amended so that the scope of the patent protection is broadened.

#### **Section 21**

From the day when the patent is granted, a patent specification shall be available at the Patent Authority. The patent specification shall contain a description, patent claims and an abstract as well as giving the patent proprietor and the inventor.

#### **Section 22**

From the day when the patent is granted, the documents in the case shall be available to anyone.

When 18 months have passed from the filing date of the patent application, or, if priority is claimed, the date from which priority is claimed, the documents, if they have not already been made available pursuant to the first paragraph, shall be made available to anyone. However, if the application has been dismissed or rejected, the documents shall be made available only if the applicant requests that the application be resumed, appeals, or makes a request under Section 72 or 73.

At the request of the applicant, the documents shall be made available earlier than what is laid down in the first and second paragraphs.

When the documents become available pursuant to the second or third paragraph, this fact shall be announced.

If a document contains a business secret and does not concern the invention for which a patent is sought or has been granted, the Patent Authority, upon request and if there are special reasons for this, may order that the document shall not be made available. If such a request has been made, the document shall not be made available until the request has been refused by a decision which has taken legal effect.

If a culture of a microorganism has been deposited according to Section 8a,

any person has the right to obtain a sample from the culture after the documents have become available to anyone in accordance with the first, second or third paragraph. This does not mean, however, that samples shall be issued to anyone who in consequence of provisions in a law or other ordinance may not handle the deposited microorganism. Nor does this mean that samples shall be issued to anyone whose handling of the sample can be assumed to involve an evident risk in view of the harmful properties of the organism.

Until the patent has been granted or the patent application has been finally decided on without resulting in a patent, if the applicant so requests, despite the provisions of the sixth paragraph, first sentence, samples from the deposit may only be issued to a special expert. The Government prescribes within what time period such a request may be made and who may be called on as an expert by a person wishing to obtain a sample.

A person wishing to obtain a sample shall make a written request therefor with the Patent Authority and render a commitment to the effect prescribed by the Government to prevent the misuse of the sample. If samples may be issued only to a special expert, the commitment must instead be rendered by said expert.

### **Section 23**

If the Patent Authority dismisses or rejects an application which has become available to anyone, this decision shall be announced when it has taken legal effect.

### **Section 24**

Anyone is entitled to file an opposition against a patent that has been granted. Oppositions shall be filed in writing with the Patent Authority within nine months from the date of the granting of the patent.

The Patent Authority shall notify the patent holder about the opposition and give him an opportunity to submit observations.

If the opposition is withdrawn, the opposition procedure may nevertheless be completed if special reasons are present.

### **Section 25**

The Patent Authority shall revoke the patent after opposition if it

(1) was granted despite the fact that the conditions of Sections 1 and 2

are not fulfilled,

(2) relates to an invention which is not so clearly disclosed that a person skilled in the art can carry it out with the guidance thereof, or

(3) encompasses matter which was not evident from the application as filed.

The Patent Authority shall reject the opposition if there is no obstacle pursuant to the first paragraph to the maintenance of the patent.

If during the opposition process the proprietor of the patent has made such amendments that there is no obstacle pursuant to the first paragraph to the maintenance of the patent in its amended wording, the Patent Authority shall declare the patent to be maintained in its amended wording.

When the decision of the Patent Authority concerning an opposition has taken legal effect, it shall be announced.

If the decision involves amendment of the patent, a new patent specification shall be available at the Patent Authority and a new patent letter shall be issued.

#### **Section 26**

A final decision by the Patent Authority concerning an application for a patent may be appealed by the applicant if the decision is not in his favor. A final decision concerning an opposition against a patent is appealable by the proprietor of the patent and by the opposer if the decision is adverse to the party wishing to appeal. If the opposer withdraws his appeal, it may still be considered if there are particular reasons.

A decision whereby a request for reinstatement under Section 15, third paragraph, or Section 19, second paragraph, has been rejected or a request for transfer under Section 18 has been granted may be appealed by the applicant. A decision rejecting a request for transfer under Section 18 may be appealed by the party who made the request.

A decision rejecting a request for an order according to Section 22, fifth paragraph, may be appealed by the one who made the request.

Stipulations concerning appeals against decisions pursuant to Section 42, 72 or 73 are given in Section 75.

#### **Section 27**

Appeals according to Section 26 are made with the Court of Patent Appeals within two months of the date of the decision.

A final decision by the Court of Patent Appeals may be appealed against to the Supreme Administrative Court within two months from the date of the decision. The appeal may not relate to any other patent claims than those considered in the appealed decision. In other respects, the rules in Articles 35 to 37 of the Code of Administrative Procedure (1971:291) concerning appeals against decisions by the Administrative Court of Appeal shall apply. Decisions by the Court of Patent Appeals shall state that special leave is required for consideration of appeals to the Supreme Administrative Court and the grounds on which such leave is granted.

The provisions of Section 22, fifth paragraph, shall apply to documents which are submitted to the Court of Patent Appeals or the Supreme Administrative Court.

## **Chapter 3 International Patent Applications**

### **Section 28**

An international patent application refers to an application made pursuant to the Patent Cooperation Treaty done at Washington on June 19, 1970.

An international patent application shall be filed with a patent authority or international bureau which is authorized according to the Patent Cooperation Treaty and its Regulations to receive such applications (receiving Office). The Swedish Patent Authority shall be a receiving Office in accordance with the stipulations by the Government. The applicant shall pay the prescribed fee for an international patent application which is filed with the Swedish Patent Authority.

The provisions of Sections 29 to 38 apply to international patent applications designating Sweden. If, however, a European patent for Sweden is applied for by such application, Chapter 11 shall apply.

### **Section 29**

An international patent application which the receiving Office has accorded an international filing date shall have the same effect in this country as a Swedish patent application filed on the same day. The provisions of Section 2, second paragraph, second sentence, however, shall only apply to an application which has been pursued in accordance with Section 31.

### **Section 30**

An international patent application shall be considered to be withdrawn as regards Sweden in those cases referred to in Section 24(1)(i) and (ii) of the Patent Cooperation Treaty.

### **Section 31**

If the applicant desires to pursue an international patent application for Sweden, he shall within 20 months from the international filing date, or if priority is claimed, the date from which priority is claimed, file with the Patent Authority a translation into Swedish of the international patent application to the extent required by the Government or, if the application is written in Swedish, a copy of the application. The applicant shall, within the same time period, pay the prescribed fee to the Patent Authority.

If the applicant has demanded that the international application be subjected to international preliminary examination and if he has, within 19 months

from the date given in the first paragraph, declared his intention, in accordance with the Patent Cooperation Treaty and its Regulations, to use the result of the international preliminary examination in applying for a patent for Sweden, he shall fulfill the requirements in the first paragraph within 30 months from said date.

If the applicant has paid the prescribed fee within the time limit stipulated in the first or second paragraph, the required translation or copy may be filed within an additional time limit of two months, provided that a prescribed additional fee is paid within the latter time limit.

If the applicant does not observe the requirements in this Section, the application shall be considered to be withdrawn as regards Sweden.

### **Section 32**

If the applicant withdraws the demand for international preliminary examination or the declaration of his intention to use the result of such examination in applying for a patent for Sweden, the international patent application shall be considered withdrawn as regards Sweden, unless the withdrawal is made before the end of the time limit stipulated in Section 31, first paragraph, and the applicant also pursues the application within the time limit stipulated in Section 31, first or third paragraph.

### **Section 33**

If an international patent application has been pursued according to Section 31, the provisions of Chapter 2 apply as regards the application and its processing unless otherwise provided in this Section or in Sections 34 to 37. An application may not without a request by the applicant, be taken up for examination before the expiry of the time limit set according to Section 31, first or second paragraph.

A request under Section 12 may not be issued before the point in time when the Patent Authority has the right to start the examination of the application.

The provisions of Section 22, second and third paragraphs, become applicable already before the application has been pursued as soon as the applicant has met his obligation under Section 31 to file a translation of the application, or, where the application is drafted in Swedish, as soon as the applicant has filed a copy of it with the Patent Authority.

For the application of Sections 48, 56 and 60, as regards an international

patent application, what is said there about the situation where the documents in the application case have been made public according to Section 22 shall refer instead to the situation where the documents have been made public in accordance with the third paragraph.

If the patent application meets the obligations as regards form and contents that are prescribed in the Patent Cooperation Treaty and the Implementing Regulations thereto, it shall be accepted in those respects.

#### **Section 34**

For an international patent application, the Patent Authority may not grant a patent or make a decision to reject before the end of the time limit stipulated by the Government, unless the applicant agrees to an earlier ruling on the application.

#### **Section 35**

For an international application, the Patent Authority may not, without the consent of the applicant, grant a patent or make the application publicly available before it has been published by the International Bureau of the World Intellectual Property Organization or 20 months have passed from the international filing date or, if priority is claimed, the date from which priority is claimed.

#### **Section 36**

If a part of an international patent application was not subjected to international search or international preliminary examination because the application was found to encompass mutually independent inventions and because the applicant did not pay, within the prescribed time limit, the additional fee according to the Patent Cooperation Treaty, the Patent Authority shall determine whether said finding was correct. If the Patent Authority determines that the finding was correct, that part of the application which was not subjected to such search or examination shall be considered withdrawn from the Patent Authority if the applicant does not pay the prescribed fee to the Patent Authority within two months from when the Patent Authority mailed to him notification of its decision. If the Patent Authority determines that the finding was not correct, the Patent Authority shall proceed with the examination of the application in its entirety.

A decision pursuant to the first paragraph, whereby the Patent Authority has determined that the patent application encompasses mutually independent inventions, may be appealed by the applicant. The provisions of Section 27,

first and second paragraphs, apply.

If the Court finds the decision of the Patent Authority to be correct, the time limit for payment of such fee as referred to in the first paragraph, second sentence, shall be computed from the date when the Patent Authority mailed to the applicant notification of the final decision of the Court.

### **Section 37**

If a part of an international patent application has not been subjected to international preliminary examination because the applicant restricted the claims after being invited by the authority for such examination to either restrict the claims or pay additional fees, that part of the application which has not been examined shall be considered withdrawn at the Patent Authority if the applicant does not pay the prescribed fee within two months after the Patent Authority mailed to him a notification to that effect.

### **Section 38**

If the receiving Office has refused to accord an international patent application an international filing date or has declared that the application shall be considered withdrawn or that the request that the application shall designate Sweden shall be considered withdrawn, the Patent Authority shall, at the request of the applicant, review said decision. The same shall apply in respect of a decision by the International Bureau that the application shall be considered withdrawn.

A petition for review pursuant to the first paragraph shall be filed with the International Bureau within the time limit stipulated by the Government. Within the same time limit, the applicant shall file with the Patent Authority a translation of the application to the extent stipulated by the Government and pay the prescribed application fee.

If the Patent Authority finds that the decision of the receiving Office or International Bureau was incorrect, the Patent Authority shall process the application according to Chapter 2. If an international filing date has not been accorded by the receiving Office, the application shall be considered to have been filed on the date which the Patent Authority deems should have been accorded as the international filing date. If the application fulfills the requirements as to form and content prescribed in the Patent Cooperation Treaty and its Regulations, it shall be accepted in these respects.

The prescriptions in Section 2, second paragraph, second sentence, shall

apply to an application which has been taken up for processing pursuant to the third paragraph if the application becomes generally available pursuant to Section 22.

## **Chapter 4 The Extent and Term of the Patent**

### **Section 39**

The extent of patent protection shall be determined by the patent claims. In construing the patent claims guidance may be taken from the description.

### **Section 40**

A granted patent may be kept in force until 20 years have passed from the day when the patent application was filed.

For patents, a prescribed annual fee shall be paid for each fee year beginning after the grant. If the patent has been granted before annual fees for the patent application have begun to become due under Section 41, the proprietor of the patent shall in any case, when the annual fee for the patent becomes due for payment for the first time, pay as well the annual fees for fee years beginning prior to grant of the patent.

The provisions concerning supplementary protection for medicinal products are to be found in Chapter 13.

## **Chapter 5 Payment of Annual Fees**

### **Section 41**

The annual fee shall be due for payment on the last day of the calendar month during which the fee year begins. The annual fees for the first two fee years, however, shall not be due until the fee for the third fee year is due. Annual fees may not be paid earlier than six months before becoming due for payment.

For such a later application as is referred to in Section 11, the annual fees for fee years which have begun before the date on which the later application was filed or which begin within two months from said date, shall in no case be due before two months have passed from said date. For an international patent application, the annual fees for fee years which have begun before the date when the application was pursued in accordance with Section 31 or was taken up for processing pursuant to Section 38 or which begin within two months from said date, shall not in any case be due before two months have passed from the date when the application was prosecuted or was taken up for processing.

An annual fee, together with the prescribed increase, may be paid within six months after the due date.

### **Section 42**

If the inventor is the applicant or proprietor of the patent and if he has considerable difficulty in paying the annual fees, the Patent Authority may give him a respite for payment if he makes a request to that effect not later than when the annual fees become due for the first time. Respites may be given for up to three years at a time, but at most until three years have passed from the grant of the patent. A request for extended respite must be made before the given respite has expired.

If a request for respite or extended respite is refused, a fee paid within two months thereafter shall be considered to have been paid on time. Annual fees, for the payment of which respite has been given under the first paragraph, may be paid together with the same increase as referred to in Section 41, third paragraph, within six months after the time until which respite has been obtained.

## **Chapter 6 Licenses, Assignments, etc.**

### **Section 43**

If the proprietor of a patent has granted another party the right to exploit an invention commercially (license), the licensee may assign his right to others only if an agreement has been made to that effect.

### **Section 44**

If a patent has been transferred to another party or a license has been granted, this shall, upon request, be recorded in the Register of Patents.

If it is proved that a license recorded in the Register has ceased to be valid, the records of the license shall be cancelled from the Register. The provisions of the first and second paragraphs shall apply correspondingly to compulsory licenses and rights referred to in Section 53, second paragraph.

In lawsuits or other legal cases concerning a patent, that party shall be regarded as the proprietor of the patent who was last entered in the Register of Patents in such capacity.

### **Section 45**

If three years have passed since the patent was granted and, in addition, four years have passed since the patent application was filed and the invention is not worked in this country to a reasonable extent, anyone who desires to work the invention in this country may obtain a compulsory license to that effect if acceptable excuses for the failure to work the invention are lacking.

On condition of reciprocity, the Government may decree that in applying the first paragraph, working in a foreign country shall be considered equivalent to working in this country.

### **Section 46**

The proprietor of a patent for an invention, the exploitation of which is prevented by a patent owned by another party, may obtain a compulsory license to exploit the invention protected thereby if this is reasonable in view of the importance of the first-named invention or for other particular reasons.

The proprietor of a patent for which a compulsory license has been granted according to the first paragraph may obtain a compulsory license to exploit the other invention, unless there are particular reasons to the contrary.

**Section 47**

When required by public interests of extreme importance, anyone who desires to make commercial use of an invention for which another party holds a patent may obtain a compulsory license to that effect.

**Section 48**

Any person who in this country was commercially exploiting an invention which is the subject of a patent application, when the application documents were made available in accordance with Section 22, shall be entitled, if the application matures into a patent, to obtain a compulsory license for the said use if very special reasons speak in its favor and if he had no knowledge of the application and had not reasonably been able to obtain such knowledge. Under corresponding conditions such right shall also be granted to anyone who has made substantial preparations for commercial exploitation of the invention in this country. Such compulsory license may also apply in respect of a period of time before the patent was granted.

**Section 49**

A compulsory license may be granted only to a party who may be presumed to have resources to utilize the invention in an acceptable manner and in accordance with the license.

A compulsory license shall not prevent the proprietor of the patent himself from utilizing the invention or from granting licenses. A compulsory license can only be transferred to others together with the business in which it is utilized or is intended to be utilized.

**Section 50**

Compulsory licenses shall be granted by the Court, which shall also decide to what extent the invention may be utilized and shall establish the remuneration and other terms of the license. When substantially changed circumstances call for it, the Court may, on request, revoke the license or lay down new terms therefor.

## **Chapter 7 Termination of the Patent, etc.**

### **Section 51**

If an annual fee for a patent is not paid pursuant to the provisions of Sections 40, 41 and 42, the patent shall lapse as of the beginning of the fee year for which the fee has not been paid.

### **Section 52**

If an action is brought to that effect, the Court shall declare the patent invalid, if

- (1) the patent was granted in spite of the fact that the conditions of Sections 1 and 2 are not fulfilled,
- (2) the patent relates to an invention the description of which is not sufficiently clear to enable a person skilled in the art to carry out the invention with the guidance thereof,
- (3) the patent comprises subject matter not appearing in the application as filed, or
- (4) the scope of patent protection has been extended after the grant of the patent.

A patent shall not be declared invalid on the grounds that the one who has obtained the patent was only entitled to a certain share thereof.

Except as provided for in the fourth paragraph, court action may be brought by anyone who suffers damage from the patent and, if called for by the public interest, by the public authority designated by the Government.

An action brought on the grounds that a patent has been granted to a party other than the one who is entitled to obtain the patent under Section 1 can only be brought by the one who claims to be so entitled. An action shall be brought within one year after obtaining knowledge of the grant of the patent and of other facts on which the action is based. If the proprietor of the patent was in good faith when the patent was granted or when it was assigned to him, the action cannot be brought later than three years after the grant of the patent.

### **Section 53**

If a patent has been granted to a party other than the one who is entitled to the patent according to Section 1, the Court, upon an action brought by the one who is entitled to the patent, shall transfer the patent to him.

With respect to the time within which the action shall be brought, the regulations in Section 52, fourth paragraph, shall apply.

If the party who is deprived of the patent has in good faith begun to use the invention commercially in this country or made substantial preparations therefor, he shall be entitled, against a reasonable remuneration and on other reasonable terms, to continue the use already begun or to implement the prepared use while retaining its general character. Under corresponding conditions such rights shall also be due to holders of licenses recorded in the Register of Patents.

Rights under the second paragraph can only be transferred to others together with the business in which they were used or in which it was intended to use them.

#### **Section 54**

If the proprietor of a patent renounces the patent in writing to the Patent Authority, the Authority shall declare the patent terminated.

If the patent is seized for debt or if there is a litigation pending for the transfer of the patent, the patent may not be declared terminated as long as the seizure is effective or until the litigation has been finally settled.

#### **Section 55**

When a patent has lapsed or been declared terminated, or been declared invalid or transferred by a judgment which has taken legal effect, the Patent Authority shall announce this.

## **Chapter 8 Obligation to Give Information**

### **Section 56**

If a patent applicant cites the application against another party before the documents in the application file have become available according to Section 22, he shall be obliged, upon request, to consent to give said party access to the documents. If the patent application includes a deposit of a culture of a microorganism as referred to in Section 8a, the consent shall also encompass the right to obtain a sample of the culture. The provisions of Section 22, sixth paragraph, second and third sentences, as well as the seventh and eighth paragraphs, apply when someone desires to obtain a sample on the basis of such consent.

Anyone who indicates, either by addressing himself directly to another, or in advertisements, or by inscription on the goods or their packaging, or in any other way, that a patent has been applied for or granted, without at the same time giving the serial number of the application or the patent, shall be obliged, upon request, to provide said number without delay. If it is not stated expressly that a patent has been applied for or granted, but circumstances are liable to create the impression that this is the case, then upon request, information as to whether a patent has been applied for or granted shall be given without delay.

## **Chapter 9 Liability and Obligation to Pay Compensation, etc.**

### **Section 57**

Any person who infringes the exclusive right which a patent implies (infringement of patent) and has done so deliberately or by gross negligence shall be fined or sentenced to imprisonment for a maximum of two years. A person who has offended against a prohibition on penalty of a fine under Section 57a may not be sentenced for an infringement which is covered by the prohibition.

Any person attempting or preparing to offend under the first paragraph shall be dealt with under Chapter 23 of the Penal Code.

The prosecutor may institute proceedings for those offenses referred to in the first and second paragraphs only if the injured party reports the offense for prosecution and prosecution is for special reasons required by the public interest.

### **Section 57a**

The Court may, if petitioned by the patentee or a person who is entitled by license to use the invention, forbid the person who is infringing the patent from continuing the infringement on penalty of a fine.

If the plaintiff shows it to be probable that an infringement is occurring and if it may reasonably be feared that the defendant will, by continuing the infringement, reduce the value of the exclusive right to the patent, the Court may impose a prohibition on penalty of a fine for the period until the case has been finally decided or some other decision has been made. Before such a prohibition is imposed, the defendant shall have had the opportunity to comment, unless a delay would involve a risk of loss.

A prohibition under the second paragraph may be imposed only if the plaintiff lodges security with the Court for the loss which may be caused to the defendant. Should the plaintiff lack the means to lodge such a security, the Court may exonerate him therefrom. In respect of the type of security, Chapter 2, Section 25 of the Execution of Judgments Code shall apply. The security shall be considered by the Court if it has not been approved by the defendant.

When the case is decided the Court shall consider whether any prohibition which has been made under the second paragraph shall remain in force.

With regard to appeal against a decision under the second or third paragraph and to the question of hearing in a higher court, the provisions of the Code of Judicial Procedure concerning appeal against a decision in accordance with Chapter 15 of the Code of Judicial Procedure shall apply.

Proceedings concerning the imposition of a fine are to be brought by the party who has applied for the prohibition. In connection with such proceedings, proceedings may be brought concerning a new prohibition on penalty of a fine.

In respect of the content of radio and wire transmissions, the provisions of the Radio Transmission Act (1966:755) shall apply.

#### **Section 58**

Anyone who commits patent infringement deliberately or through negligence shall pay a reasonable compensation for the use of the invention as well as compensation for further damage which the infringement has caused. When determining the size of the compensation, consideration shall also be given to the patent proprietor's interest in the patent not being infringed and to circumstances other than of purely economic importance.

If anyone commits patent infringement that is not deliberate or due to negligence, he shall pay compensation for the use of the invention insofar as this is found reasonable.

An action for compensation for patent infringement may only cover damage during the last five years before the action was brought. For damage suffered during the time before that, the right to compensation shall be lost.

#### **Section 59**

If petitioned by the person who has suffered infringement of his patent, the Court may as appears reasonable for the prevention of continued infringement decide that a patent-protected product which has been manufactured without the patentee's consent or an object whose use would entail an infringement of a patent shall be modified or surrendered for safekeeping for the remainder of the period of the patent or be destroyed or, in the case of a patent-protected product, be surrendered against payment to the person who has suffered the infringement. The foregoing provisions do not apply against a person who has acquired the property or a special right to it in good faith and who has not himself infringed a patent.

Property referred to in the first paragraph may be confiscated if it may

reasonably be assumed that an offense has been committed under Section 57. With regard to such confiscation, the rules governing confiscation in criminal offenses in general apply.

Notwithstanding the provisions of the first paragraph, the Court may, if there are special reasons, decide if petitioned that a possessor of property as referred to in the first paragraph shall enjoy the use of the property for the remainder of, or a part of, the period of the patent for a reasonable payment and on reasonable terms in other respects.

The provisions of the first to third paragraphs shall also apply in respect of attempts or preparations to offend under Section 57, second paragraph.

#### **Section 60**

If an invention for which a patent is sought is used commercially after the documents in the application file have become available according to Section 22, the stipulations on patent infringement shall apply to the extent that the application results in a patent. For the period before the patent was granted under Section 20, however, the patent protection shall only extend to that revealed in both the claims as worded when the application became publicly available and the claims according to the patent. Punishment shall not be imposed, and damages in consequence of use before the patent was granted may only be adjudged under Section 58, second paragraph.

The provisions of Section 58, third paragraph, shall not apply if the action for compensation is brought no later than one year after the term for opposition has expired or, if opposition has been made, no later than one year after the Patent Authority ruled that the patent was to be maintained.

#### **Section 61**

If a patent has been revoked or has been declared invalid by a judgment that has taken legal effect, the Court may not, under Sections 57 to 60, sentence to punishment, issue a prohibition under penalty of a fine, order payment of a fine or compensation or order precautionary measures to be taken.

If court action concerning patent infringement is brought and if the party against whom the action is brought claims that the patent is invalid, the question of invalidity may only be considered after court action to this effect has been brought. The Court shall order the party asserting that the patent is invalid to bring such action within a certain period of time.

If patent infringement action and patent invalidity action are brought in the same court proceedings and if it is suitable with regard to the inquiry to decide independently the question of whether there is patent infringement, a separate judgment may be rendered in this question at the request of one of the parties. If a separate judgment is rendered, the Court may decide that the case concerning invalidity shall be held in abeyance until the judgment has taken legal effect.

### **Section 62**

Anyone who omits deliberately or by negligence which is not of a minor nature to carry out what is required of him pursuant to Section 56 shall be sentenced to a fine.

Such penalty shall also be imposed on a party who deliberately or by negligence which is not of a minor nature gives false information in instances covered by the above-mentioned Section, unless punishment for such acts is provided for in the Penal Code.

Anyone who omits deliberately or by negligence to carry out what is required of him pursuant to Section 56 or gives false information in instances contemplated in that Section shall pay proper damages. If there is only minor negligence, the compensation may be adjusted accordingly.

Indictments for the offenses contemplated in the first and second paragraphs may be brought by the Public Prosecutor only at the instance of the aggrieved party and if the indictment is for particular reasons required in the public interest.

### **Section 63**

A proprietor of a patent or a party who is authorized to use the invention under a license is entitled to bring an action for a declaratory judgment to establish whether he enjoys protection against another party on the basis of the patent, if there is uncertainty in this respect and this is prejudicial to him.

A party who carries on or intends to carry on an activity may bring an action against the proprietor of the patent on the same conditions in order to establish whether a specific patent constitutes an obstacle to the said activity.

If it is alleged in the cases mentioned in the first paragraph that the patent is invalid, the provisions of Section 61, second paragraph, shall apply

correspondingly.

#### **Section 64**

Anyone who desires to bring action for invalidating a patent, or for transfer of a patent or for the grant of a compulsory license shall report this to the Patent Authority and shall also notify everyone who holds, according to the Register of Patents, a license under or a pledge of the patent. If a licensee desires to bring an action for patent infringement or for establishment under Section 63, first paragraph, he shall notify the proprietor of the patent of this fact. The same applies if a pledge-holder desires to bring action because of patent infringement.

Information stipulated in the first paragraph shall be considered to have been given when the information has been sent in the prepaid registered letter to the addresses entered in the Register of Patents.

If it is not shown when the action is brought that a report or notification has been made pursuant to the provisions of the first paragraph, the plaintiff shall be given a respite to do so. If he does not avail himself of this respite, his action shall not be taken up for consideration.

#### **Section 65**

The City Court of Stockholm shall be the proper court for litigation which concerns

- (1) the proper title to an invention for which a patent is sought,
- (2) the invalidation or transfer of a patent,
- (3) the grant of compulsory licenses, the laying down of new conditions for, or the revocation of such licenses, or rights which are referred to in Section 53, second paragraph,
- (4) patent infringements,
- (5) establishments under Section 63, or
- (6) the adjudication of compensation under Section 78.

#### **Section 66**

In cases referred to in Section 65, the City Court is competent to act with four members, two of whom shall be proficient in law and two shall have technological qualifications. More than three members proficient in law and three members with technological qualifications may not sit on the Court. One of the members proficient in law shall be the President of the Court.

In deciding cases without a main session, as well as in proceedings which do not take place at a main session or at inspections on site, the City Court is, however, competent with one member proficient in law. In such cases no more than one member proficient in law and one technologically qualified member may sit on the Court. In this case the member proficient in law is the President of the Court.

#### **Section 67**

In cases in the decisions of which a technologically qualified member of the City Court has taken part, the Court of Appeal shall be competent with three members proficient in law and two technologically qualified members. If three members proficient in law have participated in the decision of the City Court, however, at least four members proficient in law shall participate in the decision of the Court of Appeal. More than five members proficient in law and three technologically qualified members may not sit on the Court.

If the Court of Appeal finds that the participation of technologically qualified members is evidently unnecessary, then the Court of Appeal is competent without such members.

#### **Section 68**

The Government or an authority appointed by the Government shall appoint at least 25 persons for three years at a time to serve as technologically qualified members of the City Court and the Court of Appeal. During a three-year period the Government may, where necessary, appoint additional persons for such service for the remainder of the period.

The President of the Court shall select, for each particular case, the members to sit on the Court from among the persons thus appointed, according to the desired technological qualifications and other requirements. A technologically qualified member who retires from office shall be obliged to serve for the remainder of a case in which he participated earlier.

#### **Section 69**

In cases under Section 65, the Court shall obtain a statement of opinion from the Court of Patent Appeals if this is deemed necessary.

#### **Section 70**

A transcript of the judgment or final decision in cases referred to in Section 65 shall be sent to the Patent Authority.

## **Chapter 10 Special Provisions**

### **Section 71**

A proprietor of a patent who is not domiciled in this country shall have an agent residing here who is entitled to receive for him service of writs or summons, notifications and other documents in legal cases and matters concerning the patent, with the exception of writs or summons in criminal cases and orders for the party to appear personally before the Court. The agent shall be communicated to the Register of Patents and shall be recorded therein.

If the proprietor of a patent has not reported an agent as set out in the first paragraph, the service may instead be effected by sending the document to be served on him by mail in a prepaid letter to his address appearing on the Register of Patents. If there is no complete address entered in the Register, the service may be effected by making the document available at the Patent Authority and by announcing said service and the essential contents of the document in such publication as is determined by the Government. The service shall be considered to have been effected when the steps mentioned above have been taken.

On condition of reciprocity the Government may decree that the provisions of the first and second paragraphs shall not apply in respect of a proprietor of a patent who is domiciled in a specified foreign country or who has an agent residing in that country provided the agent is recorded in the Register of Patents of this country and is empowered in the manner prescribed in the first paragraph.

### **Section 72**

If a patent applicant or a proprietor of a patent, despite having observed all due care required by the circumstances, in a case other than that referred to in the second paragraph, has suffered loss of rights because he omitted to perform an act at the Patent Authority within a time limit prescribed in this Act or under the regulations of this Act, and if he completes the act within two months from the removal of the cause of noncompliance with the time limit, but at the latest within one year following the expiry of the time limit, the Patent Authority shall declare that the act shall be deemed to have been completed within the proper time limit. If the applicant or the patent proprietor desires to obtain such a declaration, he shall, within the time limit stated above for the act, make a written petition to that effect to the Patent Authority and pay a prescribed fee.

If an applicant or the proprietor of a patent has not paid the annual fee within the time limit prescribed in Section 41, third paragraph, or Section 42, third paragraph, the provisions in the first paragraph shall apply with the exception that the annual fee must be paid and the petition made no later than six months following the expiry of said time limit.

The first paragraph does not apply to the time limit referred to in Section 6, first paragraph.

As regards an international patent application which has been pursued in Sweden in accordance with Section 31, the first paragraph shall also apply if the patent applicant has suffered loss of rights because he has not observed a time limit with regard to the receiving Office, the International Searching Authority, the International Preliminary Examining Authority or the International Bureau. The act which has not been performed within the time limit shall in those cases referred to here be performed at the Patent Authority. The provisions of this paragraph do not apply to the time limit within which an international patent application must be filed to enjoy priority from an earlier application.

### **Section 73**

If, in cases referred to in Section 31 or 38, a document or fee which has been sent by mail has not arrived at the Patent Authority within the prescribed time limit, but if the act intended by the mailing is completed within two months from when the applicant realized or should have realized that the time limit had been exceeded, but in no case later than one year after the expiration of the time limit, the Patent Authority shall declare that the act shall be considered as having been completed within the proper time limit, provided:

(1) interruption of the postal service occurred on any of the 10 days preceding the expiration of the time limit on account of war, revolution, civil disorder, strike, natural catastrophe, or other like reason in the locality where the sender is staying or has his place of business, and the document or fee was mailed to the Patent Authority within five days from the resumption of postal service; or

(2) the document or fee mailed to the Patent Authority by registered mail no later than five days before the expiration of the time limit, but only if the mailing was sent by airmail where this was possible or the sender had reason to assume that the mailing by surface mail should have arrived

at the Patent Authority within two days of mailing.

If the applicant wishes to obtain such declaration pursuant to the first paragraph, he shall petition the Patent Authority in writing to that effect within the time limit prescribed in the first paragraph for the act.

#### **Section 74**

If a petition according to Section 72 or 73 has been granted and as a result thereof processing of a patent application which has been dismissed or rejected after becoming available pursuant to Section 22 is resumed or a patent which has lapsed is considered maintained, an announcement to that effect shall be made.

If anyone, after the expiration of the time limit for restoration of the dismissed application or after the rejection decision has become final or the patent has lapsed but before said announcement has been made, has begun in good faith to use the invention commercially in this country, he may, notwithstanding the patent, continue such use, retaining its general character. Such right to use shall also be granted on corresponding conditions to anyone who has made substantial preparations for commercial use of the invention in this country.

The right according to the preceding paragraph can only be transferred to others together with the business in which it originated or in which the use was intended to take place.

#### **Section 75**

Final decisions of the Patent Authority, other than those referred to in Section 26, and decisions under Section 42, 72 or 73, may be appealed against to the Court of Patent Appeals within two months from the date of the decision.

A final decision of the Court of Patent Appeals may be appealed against to the Supreme Administrative Court within two months from the date of the decision. In this case, the rules in Articles 35 to 37 of the Code of Administrative Procedure (1971:291) concerning appeals against decisions by the Administrative Court of Appeal shall apply. Decisions by the Court of Patent Appeals shall state that special leave is required for consideration by the Supreme Administrative Court and the grounds on which such leave is granted.

#### **Section 76**

Fees under this Act shall be fixed by the Government. The Government may

decree with respect to annual fees that one or more of the first fee years shall be exempt from fees.

#### **Section 77**

More detailed regulations concerning patent applications, announcements regarding patent matters, printing of the application documents, the Register of Patents and the keeping thereof as well as the Patent Authority shall be issued by the Government, or to the extent laid down by the Government, by the Patent Authority. Chronological records kept by the Patent Authority shall be available to the public to the extent laid down by the Government.

The Government may decree that documents in matters regarding an application for a patent may be delivered to an authority in another country.

The Government may also decree that the examination of patent applications, on request by the Patent Authority, may be carried out at an authority in another country or at an international institution, and that a party who applies for a patent for an invention for which he applied for a patent in another country shall be obliged to report what the patent authority in the other country communicated to him with respect to the examination of the patentability of the invention. Such obligation to report shall not be decreed, however, in respect of an application referred to in Chapter 3, if it has been the subject of an international preliminary examination and the report concerning said examination has been filed with the Patent Authority.

#### **Section 78**

If the country is at war or in danger of war, the Government, when called for in the public interest, may decree that the right to a specific invention shall be surrendered to the State or to another party designated by the Government. Reasonable compensation shall be paid for the right to the invention thus surrendered. If no agreement on the compensation can be reached with the party entitled to compensation, the court shall fix the compensation.

If a party other than the State has availed itself of the right to an invention pursuant to the first paragraph, and if the said party does not fulfill its obligations with regard to compensation, the State shall be obliged to pay the said compensation as soon as this is requested by the party entitled to compensation.

#### **Section 79**

Special regulations apply to inventions of importance for the defense of

the country.

## **Chapter 11 European Patents**

### **Section 80**

A European patent is a patent which has been granted by the European Patent Office under the European Patent Convention done at Munich on October 5, 1973. A European patent application is a patent application filed under said Convention.

An application for a European patent shall be filed with the European Patent Office. Such application may also be filed at the Patent Authority to be transmitted by the Patent Authority to the European Patent Office. However, applications referred to in Article 76 of said Convention (European divisional applications) shall always be filed at the European Patent Office.

The provisions of Sections 81 to 93 apply to European patents for Sweden and European patent applications designating Sweden.

### **Section 81**

A European patent is granted when the European Patent Office has announced its decision to allow the patent application. The European patent has the same legal effect as a patent granted in this country and is also otherwise subject to the same conditions as such patent, unless otherwise provided in this Chapter.

### **Section 82**

A European patent has effect in this country only if the applicant has supplied, within the period determined by the Government, to the Patent Authority a translation into Swedish of the text in which the patent is intended to be granted according to the notification to the applicant from the European Patent Office, and within the same period has paid the prescribed fee for printing the translation. If the European Patent Office rules that a European patent shall be maintained with amended wording this shall also apply with respect to the amended text.

The translation shall be available to anyone. If the European patent application has not been published by the European Patent Office when the translation is received, however, the translation shall not be made available before such publication has taken place.

If a translation has been supplied and the fee paid within the prescribed period and if the European Patent Office has announced its decision to allow

the patent application or has decided that the European patent shall be maintained with amended wording the Patent Authority shall issue an announcement to that effect. As soon as possible, printed copies of the translation shall be obtainable from the Patent Authority.

### **Section 83**

If the proprietor of a patent has not completed the act referred to in Section 82, first paragraph, within the prescribed time limit, the provisions of Section 72, first paragraph, concerning patent applicants shall be correspondingly applicable. If it is declared under Section 72 that such act shall be deemed to have been completed within the proper time limit, the Patent Authority shall make an announcement to that effect.

If anyone, after the time limit for completing the acts according to Section 82, first paragraph, has expired but before the above announcement has been made, has begun in good faith to use the invention commercially in this country or has made substantial preparations therefor, he shall enjoy the right provided in Section 74, second and third paragraphs.

### **Section 84 (Repealed)**

### **Section 85**

If the European Patent Office has revoked a European patent in its entirety or in part, this revocation shall have effect as if the patent in this country were declared invalid to the corresponding extent. The Patent Authority shall announce the revocation.

### **Section 86**

Annual fees for European patents shall be paid to the Patent Authority for each fee year beginning after the year in which the European Patent Office announced its decision to allow the patent application.

If an annual fee for a European patent is not paid according to the stipulations in the first paragraph and in Sections 41 and 42, Section 51 shall be correspondingly applicable. The first annual fee for a European patent is not, however, due for payment before two months have passed from the date on which the patent was granted.

### **Section 87**

A European patent application which has been accorded a filing date by the European Patent Office shall have the same effect in this country as a Swedish

patent application filed on said date. If the application under the European Patent Convention enjoys priority from an earlier date than the filing date, such priority shall be taken into consideration.

In applying Section 2, second paragraph, second sentence, the publication of a European patent application pursuant to Article 93 of the European Patent Convention shall be equivalent to the application becoming available to the public pursuant to Section 22. This shall also apply to publication referred to in Article 158(1) of the Convention if said publication is ruled by the European Patent Office to be equivalent to publication pursuant to Section 93.

#### **Section 88**

If a European patent application has been published under the European Patent Convention and a translation into Swedish of the patent claims as worded when published has been filed with the Patent Authority, the Patent Authority shall make an announcement to this effect and make the translation available to anyone.

If anyone uses an invention commercially for which patent protection is sought by a European patent application after the announcement pursuant to the first paragraph has been made, the provisions concerning patent infringement shall apply correspondingly if the application results in a patent for Sweden. In such case, however, the patent protection shall only extend to that revealed in both the patent claims as worded when published and the claims according to the patent. Punishment shall not be imposed and damages may only be determined pursuant to Section 58, second paragraph.

The provisions of Section 58, third paragraph, shall not apply if the action for compensation is brought within one year after the period for opposition against the European patent has expired or, if opposition has been filed, within one year after the decision by the European Patent Office to maintain the patent.

#### **Section 89**

If a European patent application or request that such application shall designate Sweden has been withdrawn or if under the European Patent Convention such withdrawal shall be considered to have been made, and if processing of the application has not been resumed pursuant to Article 121 of the Convention, this shall have the same effect as withdrawal of a patent application with the Patent Authority.

If a European patent application has been rejected, this shall have the same effect as rejection of a patent application in this country.

#### **Section 90**

If the translation of a document referred to in Section 82 or 88 does not coincide with the wording of the document in the language of the proceedings before the European Patent Office, the patent protection shall only extend to that which is evident from both texts.

In revocation litigation the text in the language of the proceedings shall be the sole authentic text.

#### **Section 91**

If the applicant or the proprietor of a patent files with the Patent Authority a correction of the translation referred to in Section 82 and pays the prescribed fee for printing the corrected translation, the corrected translation shall apply in place of the earlier translation. A corrected translation shall be made available to anyone if the original translation was available. If the correction has been filed and the fee paid, and if the original translation is available to anyone, the Authority shall also announce said correction. As soon as possible, printed copies of the corrected translation shall be obtainable from the Patent Authority.

If the applicant files a correction of the translation referred to in Section 88 and pays the prescribed fee, the Patent Authority shall make an announcement to this effect and make the corrected translation available to anyone. After the announcement has been made, the corrected translation shall apply in place of the earlier translation.

If anyone, before the corrected translation became valid, has, in good faith, begun to use the invention commercially in this country in a manner which according to the earlier translation did not constitute infringement of the right of the applicant or proprietor of the patent, or has made substantial preparations therefor, he shall enjoy the right specified in Section 74, second and third paragraphs.

#### **Section 92**

If the European Patent Office has decided to revoke a European patent partially or in its entirety, or if the circumstances have occurred as referred to in Section 89 regarding a European patent application, and if the European

Patent Office declares, nevertheless, under the European Patent Convention that the proprietor of the patent or the applicant shall be granted restitutio in integrum, this shall also apply in this country.

If anyone, after the decision was rendered or the circumstances occurred but prior to the announcement by the European Patent Office of the declaration referred to in the first paragraph, began in good faith to use the invention commercially in this country or made substantial preparations therefor, he shall enjoy the right specified in Section 74, second and third paragraphs.

### **Section 93**

If a European patent application which has been filed with a national patent authority is deemed to be withdrawn because the European Patent Office did not receive it within the prescribed time limit, at the request of the applicant, the Patent Authority shall take up the application as converted to an application for a Swedish patent provided:

(1) that the request is filed with the national authority which received the patent application within three months from when the applicant was notified that the application was deemed withdrawn and, furthermore, is received by the Patent Authority within 20 months from the date of filing of the application or, if priority is claimed, the day from which priority is claimed; and  
(2) the applicant pays, within the period determined by the Government, the prescribed application fee and files a translation into Swedish of the patent application.

If the patent application fulfills the requirements regarding the form of the application stipulated in the European Patent Convention and its Implementing Regulations, it shall be accepted in this respect.

## **Chapter 12 Pledging**

### **Section 94**

Patents which have been granted or which have effect in this country can be pledged pursuant to the stipulations in this Chapter.

Pledges can also apply to:

- (1) a Swedish patent application;
- (2) an international patent application which has been pursued under Section 31 or which has been taken up for processing in accordance with Section 33, third paragraph or Section 38; or
- (3) a European patent application for which a translation in accordance with Section 88 has been received by the Patent Authority or which has been converted under Section 93.

A pledge of a patent application also encompasses a portion of the application which becomes the subject of division or breaking out.

### **Section 95**

A pledge of a patent or patent application arises by registration of a written contract pledging the property. The application for registration is made with the Patent Authority.

If a registered pledge has been transferred to another, this shall be recorded upon request in the Register of Patents or the Register of Patent Applications.

If a pledge has been given to two or more individually, priority is given that pledge for which an application for registration was received first by the Patent Authority, unless otherwise agreed.

If more than one application for registration of pledging contracts is made on the same day, precedence shall be given between them in accordance with the chronological order in which they were made, unless otherwise agreed. If the contracts were simultaneous or it cannot be determined in what chronological order they were made, then they have the same right.

### **Section 96**

An application for registration in accordance with Section 95 is made by one having the right to the patent or patent application or by one to whom a pledge has been given. The applicant shall confirm the pledgor's right

to the patent or patent application.

The patent proprietor as recorded in the Register of Patents shall be considered to have the right to the patent unless the case reveals otherwise. If the application for registration relates to a pledge of a patent application, the inventor or his assignee as registered with the Patent Authority shall be considered to have the right to the patent application, unless the case shows otherwise.

If, when the application for registration is made, the pledgor does not have the pledged property at his disposal due to distraint, bankruptcy, legal incapacity, securing of payment, sequestration or for some other reason, the application cannot be granted.

#### **Section 97**

A contract in which a patent is pledged can be registered when the patent has been granted or, if the contract relates to a European patent, when it has come into effect in this country pursuant to Section 82.

A contract in which a patent application is pledged can be registered when the patent application has been registered in the Register of Patent Applications at the Patent Authority or if the contract relates to a European patent application, when an announcement under Section 88 has been made. If a pledged patent application results in the granting of a patent, the patent will thereafter be the pledged property.

#### **Section 98**

Even though registration has been effected, the right to the pledged property only applies if the contract was entered into by the proper owner of the property, entitled to dispose thereof, and if the contract is not invalid for some other reason.

#### **Section 99**

The pledge has lapsed if the patent or patent application has been transferred to another party or is otherwise no longer valid due to the provisions of this Law.

#### **Section 100**

The registration shall be stricken if the pledge, through a final judgment, has been declared void or if the pledge has lapsed or otherwise ceased to be valid.

**Section 101**

The pledging of a patent or patent application is effective from the date of application for registration under Section 95 against anyone subsequently acquiring ownership of or other right to the property.

A licensing agreement is valid against the pledgee if the agreement was concluded prior to the application for registration of the pledge contract.

**Section 102**

The provisions of other laws concerning pledges upon distraint or bankruptcy shall also apply to pledges of patents or patent applications. The receipt by the Patent Authority of an application for registration under Section 95 has the same legal effects as when a pledgee takes a tangible object in possession.

If a pledged patent or patent application is sold upon distraint or bankruptcy, such licensing agreements as are referred to in Section 101, second paragraph, shall remain in force.

**Section 103**

The pledgee may sell the pledge and take his claim from the proceeds only if he has previously informed the debtor and other known parties of the sale and they have been afforded sufficient opportunity to look after their interests.

After sale pursuant to this Section, such licensing agreements as are referred to in Section 101, second paragraph, shall remain in force.

**Section 104**

Anyone applying for registration under this Chapter shall pay a fee. The Government shall determine the size of the fee.

## **Chapter 13 Supplementary Protection for Medicinal Products**

### **Section 105**

Anyone who applies for additional protection of a pharmaceutical product under the European Community Regulation (EEC) No 1768/92 of June 18, 1992, on additional protection for pharmaceutical products shall pay the prescribed application fee.

Also the annual fee shall be paid in respect of such additional protection. The year for which the fee shall be paid shall be calculated from the date on which the protection commenced and thereafter from the corresponding date.

### **Section 106**

The provisions of Chapter 9 on liability shall apply also to the additional protection.

### **Sections 107-114 (Repealed)**

**Additional Notes**

This Act enters into force, as regards Section 8 on the date decided by the Government, and otherwise on January 1, 2001.