

**BELGIUM**  
**Patent Regulations**

as amended by the Royal Decree of May 25, 1987

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## **Chapter I General**

### **Part I Definitions**

#### **1.**

For the purposes of this Decree:

"Law" shall mean the Patent Law of March 28, 1984;

"Office" shall mean the Industrial Property Office of the Ministry of Economic Affairs;

"Minister" shall mean the Minister with the responsibility for industrial property.

### **Part II Filing of the Patent Application, Certificate of Exhibition and Declaration of Priority**

#### **2.**

1. Where the patent application is filed by post, the record referred to in the second paragraph of Section 14 of the Law shall state the day and time the application is received at the Office.

2. The Minister shall determine the days of closure and the hours of opening of the Office.

#### **3.**

The applicant must produce within four months of the filing of the patent application the certificate referred to in Section 5.5(b) of the Law issued during the exhibition by the authority responsible for the protection of industrial property at that exhibition and confirming that the invention has actually been shown there.

The certificate must additionally state the opening date of the exhibition and, where appropriate, that of first disclosure of the invention where those two dates are not the same. The certificate must be accompanied by documents enabling the invention to be identified.

#### **4.**

1. The declaration of priority referred to in Section 19.1 of the Law shall state the date of the earlier filing, the State in which or through which it has been effected and the number of the filing.

2. The date of the earlier filing and the State in which it has been effected shall be stated at the time of filing the patent application; the number

of the filing must be stated prior to expiry of the thirteenth month following the priority date.

3. A copy of the earlier application, certified by the authority with which it was filed, accompanied by a certificate from that authority stating the filing date of the earlier application, must be produced prior to the expiry of the sixteenth month following the priority date. Where the earlier application is a Belgian patent application, a European patent application or an international application filed with the Office, the applicant, instead of producing a copy of the earlier application, may request the Office, prior to the expiry of the time limit referred to in the first sentence of this paragraph, to include such copy in the patent application file on payment of a fee the amount of which shall be that laid down in the schedule of fees applicable to the copies made by the Office.

4. Payment of the priority fee or fees must be made at the latest one month after filing of the patent application.

### **Part III Representation**

#### **5.**

1. Where a professional representative has been appointed, he must produce a signed authorization. The authorization must be submitted to the Office within two months.

On a reasoned request, the Office may extend the time limit by two months.

2. A general authorization enabling a representative to act in respect of all the patent transactions of the party making the authorization may be filed. The original of the general authorization is to be filed with the Office. The professional representative appointed must submit a copy of such general authorization with each patent application in respect of which he acts within a period of two months.

#### **6.**

1. If a patent application is filed by more than one person, a common representative may be named in the request for grant of a patent subject to that person not being required to appoint a professional representative. Such naming shall exempt the applicant or applicants concerned from the requirement to designate a professional representative.

2. Where no common representative is named in accordance with the preceding paragraph, the first applicant listed in the request for grant of a patent not subject to the obligation to name a professional representative shall be deemed the common representative.

**7.**

1. The Office may request any additional information to check whether a person is entitled to act before it in accordance with Chapter III of the Law.

2. The authorization must be produced to the Office each time the latter so requests.

## **Chapter II Provisions Governing Patent Applications**

### **Part I The Request for Grant of a Patent**

#### **8.**

The request for grant of a patent shall be made on a form furnished by the Office on the model laid down by the Minister.

The form shall be filled in and signed by the patent applicant.

### **Part II The Description**

#### **9.**

1. The description shall:

(1) first state the title of the invention as appearing in the request for the grant of a patent; the title shall clearly and precisely set out the sole technical designation of the invention;

(2) specify the technical field to which the invention relates;

(3) indicate the prior art which, as far as known to the applicant, can be regarded as useful for understanding the invention and for drawing up the search report and, preferably, cite the documents reflecting such art;

(4) disclose the invention, as claimed, in such terms that the technical problem (even if not expressly stated as such) and its solution can be understood, and state any advantageous effects of the invention with reference to the prior art;

(5) briefly describe the figures in the drawings, if any;

(6) describe in detail at least one way of carrying out the invention claimed using examples where appropriate and referring to the drawings, if any;

(7) indicate explicitly, when it is not obvious from the description or nature of the invention, the way in which the invention is capable of exploitation in industry.

2. The description shall be presented in the manner and order specified in paragraph 1 unless, because of the nature of the invention, a different manner or a different order would afford a better understanding and a more economic presentation.

#### **10.**

1. In the case referred to in the second paragraph of Section 17.1 of the Law, the description shall specify:

(1) such relevant information as is available to the applicant on the characteristics of the microorganism;

(2) the collection with which, at the latest on the date of filing of the patent application, a culture of the microorganism has been deposited, together with the file number of the deposit.

2. The institutions entitled to receive deposits of microorganisms shall be those having the status of international depository authority under Article 7 of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of April 28, 1977, published in the Moniteur belge of January 14, 1984.

3. The information required by paragraph 1(2), shall be communicated:

(a) within a period of 16 months after the date of filing of the application or, if priority is claimed, after the priority date;

(b) up to the date of submission of a request for early grant of the patent under the second paragraph of Section 22.2 of the Law.

4. If the deposited culture ceases to be available either because it is no longer viable or because the institution is no longer in a position to supply samples, the interruption in availability shall be deemed not to have occurred on condition that:

(a) a new deposit is made within a period of three months from the date on which the interruption was notified to the patent applicant or owner either by the institution or by the Office;

(b) a copy of the receipt for the deposit issued by the institution, accompanied by the number of the patent application or of the patent, is communicated to the Office within four months from the date of the new deposit.

Where interruption is a result of the non-viability of the culture, the new deposit shall be made with the institution with which the original deposit was made; in other cases, it may be made with another entitled institution.

The new deposit shall be accompanied by a written statement by which the depositor certifies that the microorganism is the same as that originally deposited.

5. The deposited culture shall be available, on request to the Office, to any person as from the date of grant of the patent. Such availability shall be effected by the issue of a sample of the deposited microorganism to the requester. Such issue shall be made only if the requester has



undertaken vis-a-vis the owner of the patent not to communicate the deposited culture or any culture derived therefrom to any third party for as long as the patent remains in force.

### **Part III The Claims**

#### **11.**

1. The claims shall define the matter for which protection is sought in terms of the technical features of the invention.

Where appropriate, claims shall contain:

(1) a statement indicating the designation of the subject matter of the invention and those technical features which are necessary for the definition of the claimed subject matter but which, in combination, are part of the prior art;

(2) a characterizing portion -- preceded by the expression "characterized in that" or "characterized by" -- stating the technical features which, in combination with the features stated in item (1), it is desired to protect.

2. Notwithstanding Section 18 of the Law, a patent application may contain two or more independent claims in the same category (product, process, apparatus or use) where it is not appropriate, having regard to the subject matter of the application, to cover this subject matter by a single claim.

3. Any claim stating the essential features of an invention may be followed by one or more claims concerning particular embodiments of that invention.

4. Any claim which includes all the features of any other claim (dependent claim) shall contain, if possible at the beginning, a reference to the other claim and then state the additional features which it is desired to protect. A dependent claim shall also be admissible where the claim it directly refers to is itself a dependent claim. All dependent claims referring back to a single previous claim, and all dependent claims referring back to several previous claims, shall be grouped together to the extent and in the most appropriate way possible.

5. The number of the claims shall be reasonable in consideration of the nature of the invention claimed. If there are several claims, they shall be numbered consecutively in Arabic numerals.

6. Claims shall not, except where absolutely necessary, rely, in respect

of the technical features of the invention, on references to the description or drawings; in particular, they shall not rely on such references as: "as described in Part ... of the description," or "as illustrated in Figure ... of the drawings."

7. If the patent application contains drawings, the technical features mentioned in the claims shall preferably, if the intelligibility of the claim can thereby be increased, be followed by reference signs relating to these features and placed between parentheses. These reference signs shall not be construed as limiting the claim.

## **12.**

One and the same patent application may include:

(1) in addition to an independent claim for a product, an independent claim for a process specially adapted for the manufacture of the product, and an independent claim for the use of the product; or

(2) in addition to an independent claim for a process, an independent claim for an apparatus or means specifically designed for carrying out the process; or

(3) in addition to an independent claim for a product, an independent claim for a process specially adapted for the manufacture of the product, and an independent claim for an apparatus or means specifically designed for carrying out the process.

## **Part IV The Abstract**

## **13.**

1. The abstract shall indicate the title of the invention.

2. The abstract shall contain a concise summary of the disclosure as contained in the description, the claims and any drawings; the summary shall indicate the technical field to which the invention pertains and shall be drafted in a way which allows the clear understanding of the technical problem, the gist of the solution of that problem through the invention and the principal use or uses of the invention.

The abstract shall, where applicable, contain the chemical formula which, among those contained in the application, best characterizes the invention. It shall not contain statements on the alleged merits or value of the invention or on its speculative application.

3. The abstract shall preferably not contain more than 100 words.

4. If the patent application contains drawings, the Office may decide to publish one or more figures other than those given in the request for grant if it considers that they better characterize the invention. Each main feature mentioned in the abstract and illustrated by a drawing shall be followed by a reference sign, placed between parentheses.

5. The abstract shall be so drafted that it constitutes an efficient instrument for purposes of searching in the specific technical field, particularly by making it possible to assess whether there is a need for consulting the patent itself.

6. The Office shall check the abstract and may make formal corrections.

## **Part V Provisions on the Presentation of Drawings**

### **14.**

1. On sheets containing drawings, the usable surface area shall not exceed 26.2 x 17 cm. These sheets shall not contain frames around the usable or used surface. The minimum margins shall be as follows:

top: 2.5 cm;

left side: 2.5 cm;

right side: 1.5 cm;

bottom: 1 cm.

2. Drawings shall be executed as follows:

(1) Drawings shall be executed in durable, black, sufficiently dense and dark, uniformly thick and well-defined, lines and strokes, without colorings.

(2) Cross-sections shall be indicated by hatching which should not impede the clear reading of the reference signs and leading lines.

(3) The scale of the drawings and the distinctness of their graphical execution shall be such that a photographic reproduction with a linear reduction in size to two-thirds will enable all details to be distinguished without difficulty. If, as an exception, the scale is given on a drawing, it shall be represented graphically.

(4) All numbers, letters and reference signs appearing on the drawings shall be simple and clear. Brackets, circles or inverted commas shall not be used in association with numbers and letters.

(5) All lines in a drawing shall, ordinarily, be drawn with the aid of drafting instruments.

(6) Elements of the same figure shall be in proportion to each other,

unless a difference in proportion is indispensable for the clarity of the figure.

(7) The height of the numbers and letters shall not be less than 0.3 cm. For the lettering of drawings, the Latin and, where customary, the Greek alphabets shall be used.

(8) The same sheet of drawings may contain several figures. Where figures drawn on two or more sheets are intended to form one whole figure, the figures on the several sheets shall be so arranged that the whole figure can be assembled without concealing any part of the partial figures. The different figures shall be arranged without wasting space, preferably in an upright position, clearly separated from one another; where the figures are not arranged in an upright position, they shall be arranged horizontally, whereby the upper part of the figure shall be placed towards the left-hand side of the sheet. The different figures shall be numbered consecutively in Arabic numerals, independently of the numbering of the sheets.

(9) Reference signs not mentioned in the description and claims shall not appear in the drawings, and vice versa. The same features, when denoted by reference signs, shall, throughout the application, be denoted by the same signs.

(10) The drawings shall not contain text matter, except, when absolutely indispensable, a single word or words such as "water," "steam," "open," "closed," "section on AB," and, in the case of electric circuits and block schematic or flow-sheet diagrams, a few short catchwords indispensable for understanding.

3. flow-sheets and diagrams are considered drawings.

## **15.**

1. Drawings shall be added to the patent application if they are necessary to the understanding of the invention.

2. If the drawings have been filed at a later date than that of the filing of the patent application, the applicant shall be advised that the drawings and references to drawings contained in the patent application are deemed to have been deleted, unless the applicant submits within a period of one month a request that the application be given the date on which the drawings were filed.

3. If the drawings have not been filed, the applicant will be invited to file them within a period of one month as from the date of notification

and advised that the date of the application will be that on which the drawings are filed or, if no drawings are filed within that time limit, the references to drawings contained in the application will be deemed to have been deleted.

4. Any new date of filing of the application will be notified to the applicant.

## **Part VI Provisions Governing the Presentation of the Application Documents**

### **16.**

The application documents referred to in Section 15.1 of the Law shall be filed in three copies.

### **17.**

1. The application documents shall be so presented as to admit of direct reproduction by photography, electrostatic processes, photo offset and micro-filming, in an unlimited number of copies. All sheets shall be free from cracks, creases and folds. The recto only shall be used.

2. The application documents shall be on A4 paper (29.7 x 21 cm) which shall be pliable, strong, white, smooth, mat and durable. Each sheet shall be used with its short sides at the top and bottom (upright position).

3. Each of the application documents (request, description, claims, drawings and abstract) shall commence on a new sheet. The sheets shall be connected in such a way that they can easily be turned over, separated and joined together again.

4. Subject to Section 14.1 of this Decree, the minimum margins shall be as follows:

top: 2cm;

left side: 2.5 cm;

right side: 2cm;

bottom: 2 cm.

The recommended maximum for the margins quoted above is as follows:

top: 4cm;

left side: 4 cm;

right side: 3cm;

bottom: 3 cm.

5. All the sheets contained in the patent application shall be numbered in consecutive Arabic numerals. These shall be placed at the top of the sheet, in the middle, but not in the top margin.

6. The margins of the documents making up the patent application, when submitted, must be completely blank.

7. The lines of each sheet of the description and of the claims shall preferably be numbered in sets of five, the numbers appearing on the left side, to the right of the margin.

8. The request for the grant of a patent, the description, the claims and the abstract shall be typed or printed.

Only graphic symbols and characters and chemical and mathematical formulae may, if necessary, be written by hand or drawn. The typing (description, claims, abstract) shall be 1 1/2 spaced. All text matter shall be in characters, the capital letters of which are not less than 0.2 cm high, and shall be in dark, indelible color.

9. The request for the grant of a patent, the description, the claims and the abstract shall not contain drawings. The description, the claims and the abstract may contain chemical or mathematical formulae. The description and the abstract may contain tables. The claims may contain tables only if their subject matter makes the use of tables desirable. The tables and mathematical or chemical formulae may be arranged horizontally on the sheet if it is not possible for them to be properly presented vertically; where tables or mathematical or chemical formulae are presented horizontally on sheets, the upper parts of the tables or formulae should face towards the left side of the sheet.

10. Units of weights and measures shall be expressed in terms of the metric system. If another system is used, they shall also be expressed in terms of the metric system. Temperatures shall be expressed in degrees Celsius. If a different system is used, they shall also be expressed in degrees Celsius. Densities shall be expressed in metric units.

For the other physical values, the units recognized in international practice shall be used, for mathematical formulae symbols in general use, and for chemical formulae the symbols, atomic masses and molecular formulae in general use shall be employed. In general, use should be made of technical terms, signs and symbols generally accepted in the field in question.

11. The terminology and the signs shall be consistent throughout the patent

application.

12. Each sheet shall be reasonably free from erasures and shall be free from alterations, overwritings and interlineations. Non-compliance with this rule may be authorized if the authenticity of the content is not in question and the requirements for good reproduction are not in jeopardy.

### **Chapter III Division of the Patent Application**

#### **18.**

1. Until the date of grant of the patent or the date of the notification referred to in Section 25 of this Decree where a search report has been requested, the applicant may, on his own initiative, file divisional applications in respect of his initial patent application.

2. Where the patent application does not meet the requirements of Section 18, first paragraph, of the Law, the applicant will be invited to divide his application within a period of four months as from the date of the notification referred to in Section 22.2 of this Decree or to amend it in order to comply with the above-mentioned Section of the Law.

#### **19.**

1. Where possible, the description and drawings of the earlier patent application or any divisional application shall relate only to the matter for which protection is sought by that application in view of the third paragraph of Section 18 of the Law.

However, where it is necessary to describe in an application elements for which protection is sought in another application, those elements may be mentioned in such application.

2. All the provisions applicable to the initial application shall also apply to the divisional application.



## **Chapter IV The Search Report**

### **Part I The Drawing-Up of the Search Report**

#### **20.**

The intergovernmental body responsible for drawing up the search report referred to in Section 21.1 of the Law shall be the European Patent Office. To that effect, an Agreement shall be concluded between the Minister and the European Patent Organization. The Agreement shall set out the conditions and time limits for drawing up search reports.

#### **21.**

The search fee shall be paid within 18 months at the latest after the filing of the patent application or, where priority is claimed, from the priority date.

#### **22.**

1. If the patent application does not comply with the requirement of unity of invention, the European Patent Office shall draw up a search report on those parts of the patent application which relate to the invention, or the group of inventions within the meaning of Section 18, first paragraph, of the Law, first mentioned in the claims.

2. The Office shall inform the applicant that if search reports are to be drawn up in respect of the other inventions, the necessary search fees must be paid within four months of the date of notification. The European Patent Office shall draw up search reports for those parts of the patent application which relate to inventions in respect of which the search fees have been paid and which are the subject matter of divisional applications filed in accordance with Section 18.2 of this Decree.

#### **23.**

If the European Patent Office considers, in accordance with the Working Agreement referred to in Section 20 of this Decree, that it is not possible to carry out a meaningful search into the state of the art on the basis of all or some of the claims, it shall either declare that the search is not possible or shall, so far as is practicable, draw up a partial search report. The declaration and the partial report referred to shall be considered, for the purposes of the subsequent proceedings, as the search report.

**24.**

1. If the European Patent Office has already drawn up a search report in proceedings for the grant of a foreign patent or of a European patent concerning an invention identical to that for which a patent application has been filed in Belgium, such search report may be used in the grant proceedings for the Belgian patent if a search report obtained in the grant proceedings for a Belgian patent may be used in the grant proceedings for a foreign patent or a European patent.

2. A copy of the search report shall be attached to the patent application.

**Part II New Wording of the Claims, the Abstract and the Description**

**25.**

1. The applicant shall enjoy a period of four months as from the date of notification by the Office of the search report to file in writing a new wording of the claims and of the abstract. The request for authorization to amend the description must be filed within that same period.

2. The new wording of the description must be filed within a period of two months as from the date of notification of authorization to amend.

## **Chapter V Regularization and Correction**

### **26.**

The time limit for regularization laid down in Section 20.1 of the Law is two months from the date of notification by the Office of the irregularity in the application. The regularization fee must be paid within the same period.

The Office may extend the period by two months on a reasoned request.

### **27.**

The patent applicant may correct linguistic errors and errors of transcription up to the grant of the patent. Correction shall be accepted only where it is shown that the patent applicant could have obviously not meant a text other than that resulting from the correction.

The request shall be submitted in writing and it shall contain the text of the proposed amendments; it shall only be accepted if accompanied by payment of the due fee.

## **Chapter VI Grant of Patent**

### **28.**

1. The ministerial decision constituting the patent shall expressly refer to application of Section 39.1 or Section 39.2 of the Law, application of the Paris Convention where a priority right has been claimed and granted, the filing date of the patent application and the date of grant of the patent.

2. The ministerial decision shall contain, in particular, the names of the applicant or applicants, the title of the invention given in the request for grant, the fact that the patent results from a divisional application and that it has been granted without prior examination as to patentability of the invention, without guarantee as to the merits of the invention or the exactness of the description and at the risk of the applicant or applicants.

3. Where the applicant is neither the inventor nor the sole inventor, the name of the latter shall also be mentioned in the patent where it is known to the Office unless the inventor opposes mention by means of a request addressed to the Office prior to the date of granting of the patent.

### **29.**

The first copy of the patent will be provided without cost. Each additional copy requested by the patentee or his successors in title shall be subject to payment of a fee the amount of which shall be fixed in accordance with the applicable schedule.

## **Chapter VII Relinquishment**

### **30.**

The statement of relinquishment referred to in Section 42.1 of the Law may concern only one single patent. Where there is more than one owner, the statement must be signed by all owners. Where the statement of relinquishment is made by a person referred to in Chapter III of the Law acting on behalf of one or more owners, the appropriate authorization must be attached to the statement.

## **Chapter VIII Miscellaneous**

### **31.**

If the last day of a time limit laid down by the Law or by virtue of the Law is a Saturday, a Sunday, an official holiday or any day on which the Office is not open, the time limit shall be extended to the first working day that follows.

### **32.**

The time limit referred to in the third paragraph of Section 22.2 of the Law shall be three months.

### **33.**

The time limit referred to in Section 10.2 of the Law shall be two months in the case referred to at (a) and four months in the case referred to at (b) as from the date of notification by the Office of the change in ownership.

### **34.**

1. The declaration referred to in the second paragraph of Section 45.4 of the Law must contain:

- (1) the surnames, forenames and full addresses of the parties;
- (2) the filing date of the patent application, the title of the invention, the number and date of granting of the patent or patents or of the patent application or applications.

2. The declaration shall be made on a form issued by the Office, accompanied by a certified copy of the instrument granting the license.

### **35.**

All requests for amendments to be made to entries in the Patent Register shall be subject to payment of a fee. The Office may require on each occasion that documentary justification be furnished.

## **Chapter IX Final Provisions**

**36.** ...

**37.** ...

**38.**

The following shall be repealed:

(1) the Royal Decree of May 24, 1854, Regulating the Implementation of the Patent Law, as amended by Royal Decrees of December 15, 1912, September 10, 1924, August 29, 1926, September 29, 1958, September 1, 1959, January 22, 1960, October 9, 1962, August 8, 1964, December 20, 1965, and May 10, 1982;

(2) the Royal Decree of September 12, 1861, on Receipts for Patent Applications, as amended by Royal Decree of August 8, 1964;

(3) the Royal Decree of May 7, 1900, regulating implementation of Sections 3 and 22 of the Law of May 24, 1854, supplemented by Section 3 of the Royal Decree of May 28, 1854, as amended by Royal Decree of September 29, 1958;

(4) the Royal Decree of August 6, 1914, fixing the formalities to be complied with for priority declarations concerning patents;

(5) the Royal Decree of August 11, 1939, concerning irregular patent applications, as amended by Royal Decree of September 25, 1961;

(6) the Royal Decree of September 12, 1957, Concerning Implementation of the Law of July 15, 1957, to Facilitate the Filing of Applications for Patents, Trademarks and Industrial Designs on the Occasion of Official or Officially Recognized International Exhibitions held in Belgium;

(7) ...

(8) ...

**39.**

This Decree shall enter into force on January 1, 1987.

**40.**

Our Minister of Economic Affairs shall be responsible for implementing this Decree.