

**BULGARIA**

**Patent Law**

as amended by No. 59 of July 20, 2007

ENTRY INTO FORCE: March 1, 2008

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## **Chapter I - General Provisions**

### **Art. 1. Subject Matter**

(1) (*amended, State Gazette No. 64/2006, in force as from 09.11.2006*) This Law governs relationships occurring in the process of creation, protection or use of patentable inventions and utility models.

(2) The provisions of this Law shall equally apply to foreign natural and legal persons of States party to international treaties to which the Republic of Bulgaria is a party. This Law shall apply to foreign natural and legal persons of other States subject to reciprocity to be determined by the Patent Office. In the case of a bilateral treaty, the provisions laid down therein shall apply.

(3) (*new, State Gazette No. 17/2003*) This Law shall not govern relations arising during the creation and use of inventions and utility models related to the execution of specific activities of the Ministry of the Interior.

### **Art. 2. Inventor** (*title amended, State Gazette No. 66/2002*)

(1) (*deleted, State Gazette No. 66/2002*)

(2) (*amended, State Gazette No. 66/2002*) The person who has made an invention or a utility model shall be deemed to be the inventor thereof. If the invention or the utility model was made by several persons, the latter shall be recognized as joint inventors.

(3) (*deleted, State Gazette No. 66/2002*)

(4) (*deleted, State Gazette No. 66/2002*)

### **Art. 2a. Right of the Inventor to be Mentioned** (*new, State Gazette No. 66/2002; amended, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) The inventor of an invention or utility model shall have the right to be mentioned as such in the application, the patent for invention or the certificate for utility model registration, and any publications concerning the invention or utility model. This right shall be personal and non-transferable.

(2) The Patent Office shall *ex officio* see to it that the inventor (joint

inventors) is mentioned in the application, the patent or the registration certificate.

### **Art. 3. Representation**

(1) (*amended, State Gazette No. 64/2006, in force as from 09.11.2006*) The applicant, the owner of rights under this Law, further referred to as "the owner", or any person entitled to act in proceedings before the Patent Office may do so either in person or through a local industrial property representative. The Council of Ministers shall issue rules governing the admittance of such representatives and shall lay down the requirements that must be satisfied.

(2) (*amended, State Gazette No. 66/2002*) Applicants with no permanent address or principal place of business in the Republic of Bulgaria shall be required to act in proceedings before the Patent Office through industrial property representatives in accordance with the preceding paragraph.

(3) The provisions of the Code of Civil Procedure shall apply to representation in court disputes arising from this Law.

### **Art. 4. Transfer of Rights**

All rights afforded by this Law shall be transferable, unless otherwise provided.

### **Art. 5. Fees**

(1) (*supplemented, State Gazette No. 66/2002*) (*amended, State Gazette No. 64/2006, in force as from 09.11.2006*) All acts relating to the filing of patent applications or applications for supplementary protection certificates, proceedings before the Patent Office, publication of applications, grant, publication and maintenance of titles of protection, as well as entries into the State Register of Patents and the State Register of Supplementary Protection Certificates shall be subject to fees payable in accordance with a tariff established by the Council of Ministers. Fees for filing, examination and appeals against examination decisions shall be paid at a reduced rate according to the tariff, provided that the applicants are the inventors themselves, micro- or small enterprises under the Law on the Small and Medium-Sized Enterprises, state or public schools, state higher educational establishments or academic research organizations financed by the state budget.

(2) Where a patent application is filed together with a written statement of preparedness to license, the fees payable under the preceding paragraph shall be reduced by 50 percent.

(3) (*new, State Gazette No. 64/2006, in force as from 09.11.2006*) All acts relating to the filing of applications for utility model registration, proceedings before the Patent Office, registration, grant of registration certificates, publications and extension of the term of validity of registrations, as well as entries into the State Register of Utility Models shall be subject to fees payable in accordance with the tariff referred to in paragraph (1). Fees for filing of applications shall be paid at a reduced rate according to the tariff referred to in paragraph (1), provided that the applicants are the inventors themselves, micro- or small enterprises under the Law on the Small and Medium-Sized Enterprises, state or public schools, state higher educational establishments or academic research organizations financed by the state budget.

(4) (*new, State Gazette No. 66/2006; former paragraph 3, amended, State Gazette No. 64/2006, in force as from 09.11.2006*) Where fees under the preceding paragraphs are paid partially, payment shall be deemed not to have been made. The Patent Office may give the applicant, or the owner respectively, the opportunity to pay the remainder of the due fee only where payment can be made within the term as prescribed by the law. On expiry of the term of payment, the amount paid shall be refunded at the request of the payer.

**Art. 5a. State Registers** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) The Patent Office shall keep a State Register of Patents, a State Register of Utility Models and a State Register of Supplementary Protection Certificates.

(2) The registers referred to in paragraph (1) shall contain entries of all applications for legal protection under this Law, the manner of keeping them being determined by an order of the President of the Patent Office.

(3) The state registers shall be public. The Patent Office shall provide extracts therefrom on request and against payment of a fee according to the tariff referred to in Art. 5(1).



## **Chapter II - Patentability of Inventions**

### **Art. 6. Patentable Inventions** *(amended, State Gazette No. 66/2002)*

*(1) (amended, State Gazette No. 64/2006, in force as from 09.11.2006)* Patents shall be granted for inventions in any field of technology, which are new, involve an inventive step and are susceptible of industrial application.

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

1. discoveries, scientific theories and mathematical methods;
2. artistic work results;
3. schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;
4. presentation of information.

*(3)* The provisions of paragraph (2) shall apply to the subject matter referred to only to the extent that legal protection is sought for the subject matter as such.

*(4) (new, State Gazette No. 64/2006, in force as from 09.11.2006)* The human body at the different stages of its formation and development, as well as the mere discovery of an element thereof, including the sequence or partial sequence of a gene, may not represent a patentable invention. An element isolated from the human body or otherwise obtained through a technical process, including the sequence or partial sequence of a gene, may constitute a patentable invention, even if the structure of such element is identical with that of a natural element.

### **Art. 7. Exceptions to Patentability** *(amended, State Gazette No. 66/2002; amended, State Gazette No. 64/2006, in force as from 09.11.2006)*

*(1)* Patents shall not be granted for:

1. inventions the commercial use of which would be contrary to social order or morality, including:
  - (a) methods of cloning human beings;
  - (b) methods of altering the genetic identity of human embryo;
  - (c) use of human embryos for industrial or commercial purposes;
  - (d) methods of modifying the genetic identity of animals, where this may cause them suffering without any substantial use from a medical point of view for humans or animals, as well as animals obtained by such methods;

2. methods for treatment of the human or animal body by therapy or surgery, as well as diagnostic methods practised on the human or animal body. This shall not apply to products, in particular substances or compositions, for use in any of these methods;
3. plant or animal varieties;
4. essentially biological processes for obtaining plants and animals.

(2) The use referred to in paragraph (1)1 shall not be deemed to be so contrary merely because it is prohibited by legislation.

**Art. 7a. Patentability of biotechnological inventions** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) Patents shall be granted for inventions relating to a product consisting of or containing biological material, or to a method of obtaining, processing or use of biological material, provided that they satisfy the requirements of Art. 6(1).

(2) Biological material isolated from its natural environment or obtained by a technical process may be regarded as the subject matter of an invention, even if it existed in nature before that.

(3) Inventions relating to plants or animals shall be considered patentable, if the technical realization of the invention is not reduced to a certain plant or animal variety.

(4) The prohibition under Art. 7, paragraph (1)4 shall not apply to the patentability of inventions relating to microbiological or other technical processes or products obtained by such processes, provided that they satisfy the requirements of Art. 6(1).

**Art. 8. Novelty**

(1) An invention shall be considered to be new if it does not form part of the state of the art.

(2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, anywhere in the world, before the filing date or the priority date, as appropriate, of the patent application.

(3) (*amended, State Gazette No. 66/2002*) The state of the art shall comprise also the content of all national patent applications, the

European and international patent applications designating the Republic of Bulgaria, of which the filing date or priority date, as appropriate, are prior to the date referred to in paragraph (2), provided that after that they are published in the Official Bulletin of the Patent Office.

(4) (*new, State Gazette No. 64/2006, in force as from 09.11.2006*) The state of the art shall comprise also the content of all national applications for utility model registration, of which the filing date or priority date, as appropriate, are prior to the date referred to in paragraph (2), provided that after that a mention of the registration thereof is published.

(5) (*new, State Gazette No. 66/2002; former paragraph 4, amended, State Gazette No. 64/2006, in force as from 09.11.2006*) Substances or compositions, comprised in the state of the art under paragraphs (2) and (3), for use in the methods referred to in Article 7, paragraph (1)2, shall be considered as new, provided that their use is not comprised in the state of the art.

**Art. 9. Inventive Step** (*amended, State Gazette No. 66/2002*)

An invention shall be considered to involve an inventive step if, having regard to the state of the art in accordance with Article 8(2), at the filing date or the priority date, respectively, it is not obvious to a person skilled in the art.

**Art. 10. Industrial Application**

An invention shall be considered susceptible of industrial application if its subject matter can be made or used repeatedly in any branch of industry or agriculture.

**Art. 11. Disclosure Which is not Prejudicial to Novelty** (*amended, State Gazette No. 66/2002*)

(1) A disclosure of the invention shall not be prejudicial to novelty if it occurred within six months preceding the filing date or the priority date, as appropriate, of the patent application and if it was in consequence of:

1. an evident abuse in relation to the applicant or the preceding holder of the right to file an application;
2. the fact that the applicant or the preceding holder of the right to file has displayed the invention at an official, or officially

recognized, international exhibition.

(2) The disclosure referred to in paragraph (1), item 2 shall not be prejudicial to novelty, if the applicant states, when filing the application, that the invention has been so displayed and presents evidence of that within three months following the filing date of the application.

### **Chapter III - Patents**

#### **Art. 12. Legal Protection**

(1) (*amended, State Gazette No. 64/2006, in force as from 09.11.2006*) Legal protection for a patentable invention shall be afforded by means of a patent.

(2) (*amended, State Gazette No. 66/2002; amended, State Gazette No. 64/2006, in force as from 09.11.2006*) A patent shall attest to the exclusive right of the owner in the invention.

(3) (*new, State Gazette No. 66/2002*) A patent shall have effect with respect to third parties as from the date when a mention of the grant thereof appears in the Official Bulletin of the Patent Office.

#### **Art. 13. Right to File an Application**

(1) The right to file an application shall belong to the inventor or to his successor in title. Where the right to file belongs to two or more persons it shall be exercised by them jointly. The refusal of one or more such persons to participate in the filing procedure or in the patent granting procedure shall not prevent the others from carrying out the acts set out in this Law.

(2) The applicant shall be considered to have the right to file unless otherwise decided in court proceedings.

(3) The right to file an application in respect of an invention made in accordance with Article 15 shall belong to the employer if he files an application within three months of the date of being notified of the invention by the inventor. If he does not do so, the right to file shall devolve on the inventor. The right to file may belong jointly to the employer and the inventor if contractually agreed.

(4) Where an invention is made on a contractual basis, the right to file shall belong to the commissioning person, unless otherwise provided in the contract.

(5) (*deleted, State Gazette No. 64/2006, in force as from 09.11.2006*)

#### **Art. 14. Right to a Patent**

(1) The right to a patent shall belong to the person who has the right

to file an application in accordance with Article 13.

(2) If two or more persons file applications for the same invention at different times, the right to the patent shall belong to the person who was first to file.

(3) (*new, State Gazette No. 66/2002*) If two or more persons file independently of each other patent applications for the same invention and with the same filing date or priority date, as appropriate, the right to a patent shall belong to each of them.

#### **Art. 15. Service Inventions**

(1) An invention shall constitute a service invention if it has been made in the performance of duties under an employment relationship or other legal relationship of the inventor, unless otherwise provided by contract.

(2) An invention shall constitute a service invention in accordance with the preceding paragraph if, in making it:

1. the inventor has performed duties included in his employment tasks;
2. the inventor has performed duties beyond those referred to in item 1, but which have been specifically commissioned to him in anticipation of an invention;
3. the inventor has made use of material or financial (monetary) resources provided by the employer or the commissioning person or of knowledge and experience acquired in the course of his work.

(3) Where an invention constitutes a service invention in relation to one or some only of several inventors or executants, as appropriate, the provisions of the preceding paragraphs and of Article 13 shall apply in respect of such inventors, their employers and commissioning persons only.

(4) The inventor or executant, as appropriate, shall be required, for the purposes of this Article, to notify the employer or commissioning person, as appropriate, in writing within three months that the invention has been made.

(5) (*amended, State Gazette No. 66/2002*) An inventor who has made a service invention shall have the right to be mentioned and the right to equitable remuneration, if the latter was not provided by the

respective contract. The remuneration amount shall be determined on the basis of the following elements:

1. the profit obtained from any use of the invention during the term of validity of the patent;
2. the value of the invention;
3. the contribution of the employer in terms of capital investments for the creation of the invention, equipment, materials, knowledge, experience, personnel and other assistance. The remuneration shall be paid by the employer or, where the employer is not the patent owner, by the employer and the patent owner jointly.

(6) If the remuneration referred to in the preceding paragraph, whether on a contractual basis or determined in accordance with the applicable regulations, is not considered equitable in view of the real profit obtained and the value of the invention, it may be increased at the request of the inventor.

(7) The employer, the commissioning person, the inventor and the executant shall refrain from any action which infringes the rights referred to in this Article and in Article 13.

#### **Art. 16. Term of Patent**

The term of validity of a patent shall be 20 years from the date of filing of the application.

#### **Art. 17. Extent of Legal Protection**

(1) The extent of legal protection shall be determined by the claims. The description and the drawings shall be used to interpret the claims.

(2) The claims shall cover not only the elements as expressed but also their equivalents. An element shall be considered equivalent to an element as expressed in the claims, where:

1. the element has in essence the same function realized in the same manner and gives essentially the same result;
2. it is quite obvious to persons skilled in the art that, by the priority date, the result obtained by the element, as expressed in the claims, could be obtained by the equivalent element.

(3) In determining the extent of legal protection, due account shall be taken of any statement limiting the scope of the claims made by the applicant or by the patent owner during the examination procedure for

grant of a patent or during invalidation proceedings.

(4) The interpretation of the claims shall not be limited to the examples of embodiment of the invention included in the description.

(5) The abstract shall not be taken into account for the purpose of determining the extent of legal protection conferred by the patent.

#### **Art. 18. Provisional Protection**

(1) (*amended, State Gazette No. 66/2002*) Provisional protection shall subsist for the period from the publication of a mention of the application up to the publication of a mention of the grant of a patent; the scope of such protection shall be defined by the claims as formulated in the application.

(2) (*amended, State Gazette No. 66/2002*) The protection referred to in paragraph (1) shall have a retroactive effect as from the publication of the mention of the patent grant, in so far as the patent does not extend it.

(3) The applicant shall have the right to equitable remuneration to be paid by any person who without his authorization has performed any of the acts referred to in Article 19(3) during the period of provisional protection, provided that a patent is granted for the invention concerned.

#### **Art. 19. Contents of the Exclusive Right in an Invention**

(1) The exclusive right in an invention shall comprise the right to use the invention, the right to prohibit other persons from using it without the consent of the owner of the patent and the right to dispose of the patent.

(2) (*amended, State Gazette No. 64/2006, in force as from 09.11.2006*) Where the patent was granted to more than one person, and if not otherwise agreed between them, the invention may be fully used by each joint owner, whereas all the other rights under this Law shall be exercised with the consent of all joint owners. Where not otherwise provided in this Law with regard to joint patent ownership, the ownership rules under the Ownership Law shall apply correspondingly.

(3) (*supplemented, State Gazette No. 66/2002; amended, State Gazette*



No. 64/2006, in force as from 09.11.2006) The right to use an invention shall comprise the making, offering for sale, trading in the subject matter of the invention, import included, use of the subject matter of the invention, as well as application of the patented method.

(4) Where the subject matter of the patent is a product (article, device, machine, equipment, substance, etc.), the owner of the patent shall have the right to prohibit others from performing the following acts:

1. making the product;

2. (*amended, State Gazette No. 66/2002; amended, State Gazette No. 64/2006, in force as from 09.11.2006*) offering for sale, trading in the product, import included, use or warehousing of the product for the purpose of offering, selling or use thereof.

(5) Where the subject matter of the patent is a method, the patent owner shall have the right to prohibit others from performing the following acts:

1. application of the method;

2. performance of any act referred to in paragraph (4)2 in respect of the product obtained directly by the method.

(6) (*new, State Gazette No. 64/2006, in force as from 09.11.2006*) The patent protection of biological material possessing specific properties as a result of the invention shall cover any biological material extracted from that biological material through propagation or multiplication in an identical or different form and with the same properties.

(7) (*new, State Gazette No. 64/2006, in force as from 09.11.2006*) The patent protection of a method allowing to produce biological material with specific properties as a result of the invention shall cover biological material obtained directly by such method, as well as any other biological material directly extracted from the obtained biological material through propagation or multiplication in an identical or different form and with the same properties.

(8) (*new, State Gazette No. 64/2006, in force as from 09.11.2006*) The patent protection of a product containing or consisting of genetic information shall cover any material in which the product is included and in which the genetic information is contained and is functioning, except for the matter referred to in the first sentence of Art. 6(4).

**Art. 20. Limitations on the Effect of a Patent**

The effect of a patent shall not extend to:

1. use of the patented invention for non-commercial purposes with a view to private needs, where such use does not cause significant material prejudice to the owner of the patent;
2. use of the invention for experimental or research and development purposes relating to the subject matter of the patented invention;
3. extemporaneous preparation for individual cases in a pharmacy of a medicine in accordance with a medical prescription;
4. *(deleted, State Gazette No. 66/2002)*
5. *(deleted, State Gazette No. 66/2002)*
6. use of the patented invention on board any foreign land vehicle, vessel or aircraft, which temporarily or accidentally enters the territory, waters or airspace of the country, provided that the patented invention is used exclusively for the needs of such means of transport.
7. *(new, State Gazette No. 64/2006, in force as from 09.11.2006; deleted, State Gazette No. 31/2007, in force as from 13 April 2007)* conduction of necessary researches and tests for the purpose of filing a marketing authorization request for a generic medical product to be used in the human medicine or a generic medical product to be used in the veterinary medicine, as well as any other act related to subsequent practical requirements in connection with the filing of the request.

**Art. 20a. Exhaustion of Rights** *(new, State Gazette No. 66/2004; amended, State Gazette No. 64/2006, in force as from 09.11.2006)*

(1) *(in force as from the date of accession of the Republic of Bulgaria to the European Union)* The exclusive patent right in an invention shall not extend to acts relating to the product enjoying patent protection, where that product has been put on the market in the territory of the European Economic Area by the patent owner or with his consent.

(2) The protection under Article 19, paragraphs (6), (7) and (8) shall not extend to biological material obtained through propagation or multiplication of biological material placed on the market by the patent owner or with his consent, where the multiplication or propagation is an indispensable result of the application for which the biological material is placed on the market, provided that the obtained material is not used later for further propagation or multiplication.

(3) The protection under Article 19, paragraphs (6), (7) and (8) shall not extend to the sale or any other form of trading in plant propagation

material performed by the patent owner or with his consent to an agricultural producer for agricultural purposes. The selling or any other form of trading comprises an authorization for the agricultural producer to use the product of his harvest for propagation or multiplication purposes in his farm.

(4) The procedure of applying paragraph (3) shall be specified in an ordinance of the Minister for Agriculture and Forestry.

(5) The protection under Article 19, paragraphs (6), (7) and (8) shall not extend to the sale or any other form of trading in breeding stock or other animal reproduction material performed by the patent owner or with his consent to an agricultural producer, such sale comprising an authorization for the agricultural producer to use such stock or other animal reproduction material for the purposes of conducting his agricultural activity, but not to sell it within or for the purposes of commercial reproduction activity.

(6) The procedure of applying paragraph (5) shall be specified in an ordinance of the Minister for Agriculture and Forestry.

**Art. 21. Right of Prior Use**

A person who, prior to the filing date of the patent application, has used the invention in good faith or has made the necessary preparations for its use may continue to use the invention after such date on condition that the volume remains the same.

**Art. 22. Right of Subsequent Use**

A person who, after the lapse of a patent, has used the patented invention or has made the necessary preparations for such use may continue to use the invention in the same volume after renewal of the patent under Article 26(2).

**Art. 23. Assignment of the Right of Prior Use and the Right of Subsequent Use**

The right of prior use and the right of subsequent use may be transferred only together with the enterprise or that part of the enterprise in which such rights have arisen and may be exercised, subject to there being no increase in the volume of such use outside the enterprise.

**Art. 24. Secret Patents** (*amended, State Gazette No. 45/2002; amended, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) Secret patents shall be granted for secret inventions, applied for by Bulgarian citizens with permanent address in the Republic of Bulgaria or legal persons with principal place of business in the Republic of Bulgaria.

(2) Secret inventions are inventions, which contain classified information representing a state secret within the meaning of Article 25 of the Law on the Protection of Classified Information.

(3) The authorities competent to determine the information security classification level and to remove the level of classification of secret patents shall be the Ministry of the Interior and the Ministry of Defence.

(4) Secret patent applications shall be filed with the Patent Office, the filing date being the date on which the documents referred to in Article 34(2) are received.

(5) No fees are payable for the acts related to a secret patent application and the grant and maintenance of a secret patent.

(6) A secret patent applications shall be examined in accordance with Article 46(1). Where the requirements are satisfied, a secret patent shall be granted, to which the Patent Office shall place the respective security grading.

(7) Appeals against decisions to terminate the proceedings in a secret patent application, such decisions being based on Article 46(1), as well as requests for invalidation of a secret patent, shall be considered in camera by the Sofia City Court in accordance with the Code of Administrative Procedure. Appeals shall be lodged within three months following receipt of the decision, while requests may be filed throughout the lifetime of the secret patent.

(8) The person entitled to use and dispose of a secret patent shall be determined by decision of the Council of Ministers.

(9) Where the classification level is removed, the competent authority shall notify the Patent Office respectively. The Patent Office shall

inform the holder, giving him three months to pay the fees referred to in Article 53, as well as the patent maintenance fee referred to in Article 33(4). On payment of the fees, the patent shall be recorded in the Register of Patents and the publications under Article 51 shall be performed.

(10) The secret patent owner may file a search and examination request after removal of the information security classification level. The request shall be accompanied by a document certifying payment of the search and examination fee under Article 46b(2).

(11) The procedure of determining the information security classification level and removal thereof with respect to applications and secret patents shall be specified in a Secret Patents Regulation adopted by the Council of Ministers.

**Art. 25. Patenting Abroad** (*amended, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) Bulgarian citizens with a permanent address in the Republic of Bulgaria or legal persons with a principal place of business in the Republic of Bulgaria shall have the right to seek patents for their inventions abroad after the examination referred to in Article 45a.

(2) Secret patents may not be patented abroad.

**Art. 26. Lapse of Patent**

(1) A patent shall lapse:

1. on expiry of the term for which it has been granted;
2. on relinquishment by the patent owner -- as from the date of receipt at the Patent Office of a written statement by the patent owner. The relinquishment of a patent by one joint owner shall not entail lapse of the patent, which shall continue to belong to the other joint owners;
3. (*amended, State Gazette No. 66/2002*) failure to pay the fees for keeping the patent in force -- as from the expiry date of the time limit referred to in Article 33(3).

(2) (*amended, State Gazette No. 66/2002; amended, State Gazette No. 64/2006; in force as from 09.11.2006*) A patent that has lapsed due to non-payment of the patent annuity may be renewed within a six-month period following expiry of the time limit referred to in Article 33(3) after payment of a patent renewal fee, as well as of the double amount

of the due fee.

(3) A patent shall be declared invalid in cases where:

1. the invention is not patentable;
2. the disclosure of the essential elements of the invention is incomplete and unclear;
3. the patent owner did not have the right to the patent where established by virtue of a court decision;
4. the subject matter of the patent extends beyond the content of the application as filed or, if the patent was granted on a divisional application, beyond the content of the earlier application as filed.

(4) At the request of the person who has the right thereto, the patent shall be transferred to him without lapse.

(5) If the grounds for invalidation refer to a part only of the claims, invalidation shall be partial. The patent shall remain valid in respect of the other claims only where these claims are patentable.

(6) On declaration of invalidation, the effect of the patent shall cease as of the filing date of the application.

(7) The *mala fide* owner of an invalidated patent shall be liable for damages.

(8) Invalidation of a patent shall have no effect on:

1. final decisions on patent infringement insofar as they have been enforced;
2. licensing contracts concluded and executed prior to the invalidation, unless otherwise agreed.

#### **Art. 27. Infringement of Patent Rights**

(1) Any use of the invention, which is covered by the patent protection scope and which is made without the consent of the patent owner shall constitute an infringement of the patent.

(2) (*amended, State Gazette No. 64/2006, in force as from 09.11.2006*) Any person who offers for sale products, which are the subject matter of a patent and have been made by other persons in infringement of that patent, or who trades in or stocks such products with the aim of using them or who uses them, shall be liable for infringement only if he has

acted intentionally.

(3) The patent owner and the holder of an exclusive license may institute patent infringement proceedings, unless otherwise agreed. Where the patent belongs to more than one person, each joint owner shall have the right to independently institute patent infringement proceedings.

(4) The holder of a license of right in accordance with Article 30 and of a compulsory license in accordance with Article 32 may institute patent infringement proceedings if the patent owner does not exercise his own right to institute such proceedings within six months of receipt of a written invitation to do so from the licensee.

(5) Any licensee may join patent infringement proceedings instituted by the patent owner. The same shall apply to the patent owner when proceedings have been instituted by the licensee in accordance with paragraphs (3) and (4).

(6) Patent infringement proceedings may also be instituted by the applicant prior to the grant of a patent, after a mention of the application has been published.

**Art. 28. Patent Infringement Proceedings**

(1) Patent infringement proceedings may include:

1. action to ascertain the fact of infringement;
2. action for compensation of the damages suffered and profits lost;
3. action to enjoin the infringer from performing all infringing acts.

(2) Where proceedings under the preceding paragraph lead to a conviction, the court may order, at the plaintiff's request:

1. publication of the sentence in two daily newspapers at the expense of the infringer;
2. reprocessing or destruction of the infringing articles and also, if the infringement was intentional, of the means with which the infringement was carried out.

**Art. 28a. Right to Information** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) In case of patent rights infringement, the court may order, at the request of the plaintiff, that any information on the infringing products origin and distribution network be furnished by the defendant

and/or any third party, who:

1. has disposed of such products in trade;
2. has been mentioned by the person referred to in item 1 as a participant in the production, making or distribution of the products.

(2) The information referred to in paragraph (1) shall comprise the names and addresses of the producers, distributors, suppliers and any other former possessors of the products, supposed wholesalers and retail dealers, as well as information on the produced, made, delivered, received or ordered quantities and the price of such products.

(3) The information referred to in paragraphs (1) and (2) may also be used for the purposes of criminal proceedings.

(4) Paragraph (1) shall not apply to cases where its effect is disproportionate to the infringement severity.

(5) Any person who places on the products and the packaging thereof a marking such as to create the impression of the products being protected by a patent or being the subject matter of a patent application, or any person who uses such marking in advertising or information materials, shall present, on request, immediate information about the patent or the patent application to any third party having legal interest in it.

#### **Art. 29. Burden of Proof**

Where the rights of the patent owner under Article 19(5) are infringed, the burden of proving that the product is not produced by the patented method shall be on the infringer, if the product is new.

#### **Art. 30. Preparedness for Licensing (License of Right)**

(1) (*supplemented, State Gazette No. 66/2002*) At the request of the applicant or patent owner, and provided that the latter has not yet granted an exclusive license with respect to his invention, the invention may only once be offered for public use.

(2) The request by the applicant or patent owner shall contain a written statement that he authorizes any person to use the invention under the conditions of a non-exclusive license in return for equitable license remuneration.



(3) The written statement under the preceding paragraph shall be published in the Official Bulletin of the Patent Office.

(4) The licensee may at any time renounce the license by written notification to the patent owner.

(5) Where an offer of license is made in respect of the patented invention (license of right), the annual patent fees shall be reduced by 50 percent, excluding the fees already paid.

(6) The patent owner may at any time request in writing that the offer of license (license of right) be terminated. Withdrawal of the offer of license shall be published in the Official Bulletin of the Patent Office and shall entail loss of the rights referred to in the preceding paragraph.

(7) Withdrawal of the offer of license shall have no effect on licenses already granted or requested.

**Art. 31. Contractual License** (*amended, State Gazette No. 83/1996*)

(1) An invention for which a patent is sought or has been obtained may be the subject of a licensing contract.

(2) Exclusive, non-exclusive, full or limited licenses may be granted under a licensing contract.

(3) (*supplemented, State Gazette No. 83/1996*). An exclusive license shall be expressly agreed on. The licensor under an exclusive licensing contract shall not be entitled to grant licenses for the same subject matter to other persons. He himself shall have the right to use the licensed invention only if explicitly stated in the contract.

(4) The licensing contract shall have effect with respect to third parties as from the date on which it is recorded in the register at the Patent Office.

(5) (*amended, State Gazette No. 45/2002; deleted, State Gazette No. 64/2006, in force as from 09.11.2006*).

**Art. 31a. Patents as a Security Object** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) A patent may be a security object in civil action proceedings.

(2) Security shall be recorded in the State Register of Patents at the request of one of the action parties.

(3) The request shall contain data identifying the patent owner and the person in whose favor the security was afforded, data identifying the patent, such as number and title, and the kind of the security measure. The request shall be accompanied by a document establishing the security.

(4) The security shall have effect with respect to third parties as from the date on which a mention about its entry into the State Register of Patents is published in the Official Bulletin of the Patent Office.

**Art. 31b. Patents as a Registered Pledge Object** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) A patent may be a registered pledge object.

(2) The provisions of Articles 26 to 31 of the Registered Pledges Law shall apply to recording of registered pledges in the State Register of Patents. Where the patent is a joint possession, the registered pledge recording shall require the written consent of all joint owners. A certificate shall be given to the pledger. Within two months following the recording, a publication shall be made in the Official Bulletin of the Patent Office.

(3) The pledge shall have effect with respect to third parties as from the date on which a mention about its entry into the State Register of Patents is published in the Official Bulletin of the Patent Office.

**Art. 31c. Patents in Bankruptcy Proceedings** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) A patent shall be included in the bankrupts estate in bankruptcy proceedings against its holder.

(2) Where the patent is a joint possession, paragraph (1) shall apply in accordance with the co-owner's share.

(3) The fact of the patent being included in the bankrupts estate shall be recorded in the State Register of Patents by virtue of a court order and shall be published in the Official Bulletin of the Patent Office within two months following the recording date.

**Art. 32. Compulsory License**

(1) (*amended, State Gazette No. 64/2006, in force as from 09.11.2006*) Any person concerned, who has unsuccessfully tried to get a contractual license from the holder under fair conditions, may request the Patent Office to grant him a compulsory license to use the invention, provided that at least one of the following conditions is met:

1. failure to use the invention for a period of four years from filing of the patent application or three years from the grant of a patent, the time limit which expires later being applicable;
2. insufficient working of the invention to satisfy the needs of the national market, within the time limits set out in item 1 above, unless the patent owner gives valid reasons therefor.

(2) The person requesting a license under the preceding paragraph shall be required to prove that he is in a position to work the invention within the limits of the compulsory license requested.

(3) (*new, State Gazette No. 64/2006, in force as from 09.11.2006*) Beyond the cases referred to in paragraph (1), a compulsory license may be granted, where demanded by the public interest, without negotiating with the holder of the right in the invention enjoying patent protection.

(4) (*former paragraph 3; amended, State Gazette No. 64/2006, in force as from 09.11.2006*) A compulsory license may be granted to a holder, whose invention is the subject matter of a later patent and is included in the scope of another, earlier patent, if the owner of the earlier patent refuses to grant a license under fair conditions, where the subject matter of the later patent represents significant technical progress of great economic importance compared to the subject matter of the earlier patent. The owner of the earlier patent shall be entitled to a cross license under reasonable conditions for working the invention claimed in the later patent.

(5) (*former paragraph 4, State Gazette No. 64/2006, in force as from 09.11.2006*) A compulsory license may only be non-exclusive. It may only

be assigned together with the enterprise in which the licensed invention is being worked.

(6) (*former paragraph 5, State Gazette No. 64/2006, in force as from 09.11.2006*) A compulsory license may be terminated if within one year of its grant the licensee has made no preparation for working the invention. A compulsory license shall be terminated in all cases if the licensee fails to start working the invention within two years of grant.

(7) (*new, State Gazette No. 64/2006, in force as from 09.11.2006*) The scope of a compulsory license shall be determined by the purpose it was granted for.

(8) (*former paragraph 6, State Gazette No. 64/2006, in force as from 09.11.2006*) A compulsory license shall not be granted to an infringer of the patent.

(9) (*former paragraph 7, State Gazette No. 64/2006, in force as from 09.11.2006*) Bilateral and multilateral treaties to which the Republic of Bulgaria is a party may lay down further conditions for the grant of a compulsory license to patent owners from States party to such treaties.

(10) (*new, State Gazette No. 64/2006, in force as from 09.11.2006*) The compulsory licensee shall owe the patent owner remuneration.

(11) (*new, State Gazette No. 64/2006, in force as from 09.11.2006*) A compulsory license shall be terminated as soon as the ground therefor no longer exists.

(12) (*new, State Gazette No. 64/2006, in force as from 09.11.2006*) The procedure of granting and terminating compulsory licenses shall be specified in the Regulation referred to in Article 55(3).

**Art. 32a. Compulsory Cross-License** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) Where a breeder cannot obtain or use the right in a plant variety without infringing an earlier patent, he may apply for a compulsory license for non-exclusive use of the invention enjoying patent protection, in so far as the license is required for using the plant

variety for the purposes of its legal protection, subject to the payment of a respective remuneration. Where such a license is granted, the patent owner shall be entitled to a cross-license for using the protected plant variety under fair conditions.

(2) Where the owner of a patent for a biotechnological invention cannot use it without infringing an earlier plant variety right, he may apply for a compulsory license for non-exclusive use of the protected plant variety, subject to the payment of a respective remuneration. Where such a license is granted, the protected variety owner shall be entitled to get a cross-license for using the invention under fair conditions.

(3) The person applying for the grant of a compulsory license according to paragraphs (1) and (2) shall prove that:

1. he has tried unsuccessfully to get a contractual license from the patent or plant variety owner;

2. the plant variety or the invention represents significant technical progress of great economic importance compared to the patented invention or the protected plant variety.

### **Art. 33. Fees for Maintaining Patents**

(1) (*amended, State Gazette No. 66/2002*) Annual maintenance fees shall be paid in respect of a patent, each patent year starting from the filing date of the patent application, and the first patent year starting from that date too.

(2) (*amended, State Gazette No. 66/2002*) Advance payment of the patent annuity for each subsequent patent year shall be effected no later than on the last day of the month, in which the preceding patent year expires. Payment may not be effected for more than one patent year.

(3) (*amended, State Gazette No. 66/2002*) In case of failure to observe the term referred to in paragraph (2), the patent shall still remain in force, provided that the patent owner pays the due fee at twice the rate within six months following expiration of that term.

(4) (*new, State Gazette No. 66/2002; amended, State Gazette No. 64/2006, in force as from 09.11.2006*) Patent annuities until such time as a decision is taken to grant a patent, as well as the current patent annuity, shall be paid together with the patent grant fee and the fee for publishing the mention of the patent grant in correspondence with

and subject to the provisions of Article 53. Where the current patent year expires within the three-month term referred to in Article 53, the fee for the next patent year shall be paid too.

## **Chapter IV - Proceedings Before the Patent Office**

### **Art. 34. Filing of Patent Application**

(1) (*amended, State Gazette No. 64/2006, in force as from 09.11.2006*) Patent applications shall be filed with the Patent Office and shall be recorded in the State Register. The manner of drafting and the procedure of filing and examination at the Patent Office shall be laid down in a regulation of the Council of Ministers.

(2) The filing date of the application shall be the date of receipt at the Patent Office of the following documents:

1. a request for the grant of a patent containing the title of the invention and the data identifying the applicant, in the Bulgarian language;
2. a description of the invention, disclosing at least its essential elements.
3. (*deleted, State Gazette No. 66/2002*)

### **Art. 35. Contents of Patent Application**

(1) In addition to the compulsory documents referred to in Article 34(2), the patent application shall contain:

1. one or more claims;
2. drawings, if needed to understand the invention;
3. an abstract;
4. a written statement and a priority certificate, where priority is claimed;
5. (*deleted, State Gazette No. 66/2002*)

(2) (*new, State Gazette No. 66/2002; amended, State Gazette No. 64/2006, in force as from 09.11.2006*) The application shall be accompanied by a document certifying payment of the fees for filing, formal requirements examination, preliminary examination and admissibility, patent claims and priority claims.

(3) (*former paragraph 2; amended, State Gazette No. 66/2002; amended, State Gazette No. 64/2006, in force as from 09.11.2006*) The documents in the application shall be submitted in the Bulgarian language; the description, claims, drawings and abstract shall be filed in three copies. If the documents referred to in paragraph (1), items 1, 2 and 3 and Article 34(2)2 are filed in a language other than Bulgarian, the filing date may be maintained if they are furnished in the Bulgarian

language within three months of that date. This term is non-extendable.

(4) (*former paragraph 3, State Gazette No. 66/2002*) If the applicant files the application through an industrial property representative, powers of attorney shall also be attached to the application.

**Art. 36. Request for Grant of Patent**

The request for the grant of a patent shall contain: the name and address of the applicant and of his industrial property representative, where appropriate; the name and address of the inventor; a written statement as to the true inventor; the title of the invention and the particulars of any claimed priority -- number, date and country of the priority document, as well as a written statement of preparedness for licensing, if the applicant so wishes.

**Art. 37. Description of Invention**

(1) (*amended, State Gazette No. 64/2006, in force as from 09.11.2006*) The description shall contain the title and the technical field to which the invention belongs; the prior art, as far as known to the applicant, with citation of the documents in which it is described; clear and adequate disclosure of the essential technical features of the invention and its advantages, in such manner that the invention may be carried out by a person skilled in the art; brief explanations of the drawings and at least one embodiment of the invention using examples, if necessary, and reference to the drawings, if any, as well as the manner of working the invention in industry, where this is not obvious from the description or the character of the invention.

(2) (*amended, State Gazette No. 66/2002; amended, State Gazette No. 64/2006, in force as from 09.11.2006*) Where the patent application refers to the use of biological material or to material such that is not available to the public and cannot be described in the patent application in such a way as to enable the invention to be carried out by a person skilled in the art, the description shall contain the biological material deposit data -- the number and date of the deposit and the name and address of the international depositary authority according to Article 7 of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, the deposit being made no later than the priority date. The description of the application shall contain all information on the characteristics of the deposited biological material the applicant



disposes of.

(3) (*new, State Gazette No. 64/2006, in force as from 09.11.2006*) If the biological material is deposited outside the Republic of Bulgaria, the applicant shall, within three months following publication of a mention about the patent application, make a deposit of that material in the National Industrial Microorganisms and Cell Cultures Bank too, so that any person who has the right of access could get a biological material sample in the Republic of Bulgaria in accordance with a procedure as laid down in a regulation of the Council of Ministers concerning the deposit and access for the purposes of patent procedure.

(4) (*new, State Gazette No. 64/2006, in force as from 09.11.2006*) If biological material deposited in accordance with paragraph (3) is no longer available in the National Industrial Microorganisms and Cell Cultures Bank due to the fact that it is no longer viable or for some other reason, the applicant shall make another deposit of the material within a term and in a manner as laid down in the regulation referred to in paragraph (3).

(5) (*new, State Gazette No. 64/2006, in force as from 09.11.2006*) Where an invention relates to a sequence or partial sequence of a gene, the patent application shall contain a disclosure of the industrial applicability of such sequence.

#### **Art. 38. Claims**

The claim or claims shall define the matter for which protection is sought. They shall be clear and precise and be supported by the description.

#### **Art. 39. Abstract**

The abstract shall briefly summarize the nature of the invention and shall serve for information purposes only.

#### **Art. 40. Unity**

(1) The application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

(2) Where the application relates to a group of inventions, the requirement of unity shall be considered satisfied if there is a technical relationship between the inventions involving one or more

identical or similar specific technical features.

(3) Specific technical features shall mean the technical features, which define the contribution that each invention, considered as a whole, makes to the state of the art.

(4) The fact that a patent has been granted for an application that did not comply with the requirement referred to in paragraph (1) shall not be grounds for invalidating the patent.

**Art. 41. Division of Application**

(1) (*amended, State Gazette No. 66/2002*) If the requirements of Article 40 are not satisfied, the Examination Department shall propose to the applicant that he divides the application within a three-month time limit. If, within this time limit, the applicant files individual applications for the divided parts, the date of filing or the priority date, as appropriate, of the initially filed application shall be regarded as the filing date of those applications or their priority date, as appropriate, provided that the provisions of Article 34(2) are complied with.

(2) (*amended, State Gazette No. 66/2002; amended, State Gazette No. 64/2006, in force as from 09.11.2006*) An applicant may divide his application of his own volition at any time until receipt of a notice according to Article 47(5) or until receipt of a decision according to Article 46(1), Article 46a(1) and (2), and Article 47(3) in connection therewith. If, within three months following the division request of the applicant, the divided parts are filed as independent applications, the date of filing or priority date, as appropriate, of the original application shall be regarded as the date of filing or priority date, as appropriate, of the resulting applications, provided that the requirements of Article 34(2) are satisfied.

**Art. 42. Amendments to Application** (*amended, State Gazette No. 66/2002*)

(1) An application or a patent may be amended during the proceedings in the application until such time as a decision is taken or during patent invalidation proceedings.

(2) (*amended, State Gazette No. 66/2002, in force as from 09.11.2006*) The applicant may amend the application of his own volition up to the publication under Article 46c or, if no publication has been made, until

receipt of a notice under Article 47(5) or until receipt of a decision under Article 46(1), Article 46a(1) and (2), and Article 47(3), subject to the payment of the prescribed fee.

(3) The amendments referred to in paragraphs (1) and (2) may not extend beyond the content of the application as filed. During invalidation proceedings, no amendments may be made to the patent claims, which would extend the scope of protection.

**Art. 43. Withdrawal of Application** (*amended, State Gazette No. 66/2002*)

A patent application may be withdrawn on a written request from the applicant, provided that no patent has yet been granted. In such case, the application shall not be comprised in the state of the art referred to in Article 8(3).

**Art. 44. Priority Right**

(1) The priority right afforded to the applicant shall be the filing date of the application in accordance with Article 34.

(2) (*amended, State Gazette No. 64/2006; amended, State Gazette No. 66/2002, in force as from 09.11.2006*) A priority right under international treaties to which the Republic of Bulgaria is party shall be afforded if, within two months of the filing date of the application with the Patent Office, the applicant submits a declaration of priority containing the number, date and country of the initial application. The priority right shall be established within up to three months from the filing date of the application with the Patent Office. Within the same period, the applicant shall pay a fee for the claimed priority too. Failure to comply with the above time limits or to pay the priority fees shall result in the loss of the priority right. The priority data may be changed within these time limits.

(3) At the request of the applicant, any patent application may enjoy the priority of earlier applications filed by that applicant. Each such application shall have been filed with the Patent Office in compliance with this Law and shall have a filing date no earlier than 12 months before the filing date of the patent application and no national or international priority may have been requested for it. The time limits beginning with a priority date shall start from the earliest such date.

(4) The priority of earlier applications filed with the Patent Office,

in accordance with the preceding paragraph, may be requested within two months of the filing date of the patent application and the applicant shall specify in the declaration the number and filing date of the earlier applications.

**Art. 45. Confidentiality of Application**

(1) There shall be no access at the Patent Office to patent application documents prior to publication of an application, except where the applicant gives his consent in writing.

(2) *(deleted, State Gazette No. 64/2006, in force as from 09.11.2006)*

(3) *(amended, State Gazette No. 45/2006; deleted, State Gazette No. 64/2006, in force as from 09.11.2006)*

(4) The provision by the Patent Office of the bibliographic data of unpublished applications shall not infringe the confidentiality requirements.

**Art. 45a. Examination as to the Availability of Classified Information**

*(new, State Gazette No. 64/2006, in force as from 09.11.2006)*

(1) Where the applicant is a Bulgarian citizen with a permanent address in the Republic of Bulgaria or a legal person with a principal place of business in the Republic of Bulgaria, the competent authorities referred to in Article 24(3) shall, within one month from the filing date of the application, examine it as to whether it contains classified information within the meaning of Article 25 of the Law on the Protection of Classified Information.

(2) Where the application is found to contain classified information, it shall be sent in due order to the competent authorities, and the latter shall, within three months from receipt thereof, determine the level of security classification.

(3) If, on expiry of the term referred to in paragraph (2), no information is received at the Patent Office concerning the security classification level, it shall be considered that the application is not a secret patent application.

(4) Where the application has been filed as a secret patent application and, after the examination referred to in paragraphs (1) to (3), no

security classification level has been determined by the competent authorities, the Patent Office shall inform the applicant that the application contains no secret invention and shall ask for his express consent for the application to be examined in accordance with the ordinary provisions. In case no such consent is received within three months, the application shall be deemed to be withdrawn.

**Art. 46. Examination of the Formal Requirements** (*title amended, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) (*amended, State Gazette No. 66/2002; amended, State Gazette No. 64/2006, in force as from 09.11.2006*) Within one month following the examination referred to in Article 45a (1) or (3) or from the date of filing of an application by a foreign applicant, any application bearing a filing date shall be subjected to examination as to its compliance with the requirements of Article 35, paragraph (1), items 1, 2 and 3, paragraph (4), and Article 36. If deficiencies are ascertained, the applicant shall be informed thereof and shall be given a three-month time limit to correct them. If the applicant fails to respond or to make the corrections within the above time limit, a decision shall be taken to terminate the procedure.

(2) (*new, State Gazette No. 66/2002*) Where the patent application is not accompanied by a document certifying payment of the fees referred to in Article 35(2), the applicant shall be given three months to pay them. If the applicant fails to do so, the application shall be deemed to be withdrawn.

(3) (*former text of paragraph 2; amended, State Gazette No. 66/2002; amended, State Gazette No. 64/2006, in force as from 09.11.2006*) Where on expiration of the three-month time limit referred to in Article 35(3) it is established that no Bulgarian translation has been furnished, the application shall be deemed to be withdrawn and the applicant shall be informed thereof.

(4) (*new, State Gazette No. 64/2006, in force as from 09.11.2006*) Where priority is claimed according to Article 44(2) or (3), examination shall be carried out on expiry of the three-month time limit referred to in Article 44(2) as to whether the requirements of Article 44, Article 35, paragraph (1), item 4 and paragraph (2) are satisfied. If discrepancies are ascertained, the applicant shall be informed thereof and shall be given one month to submit his comments. If the applicant

fails to respond or his arguments are groundless, the priority claim shall not be granted and the applicant shall be informed accordingly.

**Art. 46a. Preliminary Examination and Examination as to Legal Protection Admissibility** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) Within three months following the examination referred to in Article 46, an examiner from the Examination Department shall carry out preliminary examination under Articles 37, 38 and 40. If deficiencies are ascertained, the applicant shall be informed thereof and shall be given three months to eliminate them. If the applicant fails to respond within this period or fails to remove the deficiencies, a decision shall be taken to terminate the procedure.

(2) Within the term referred to in paragraph (1), examination shall be performed also for compliance with the requirements of Article 6(2) and (4) and Article 7. If deficiencies are ascertained, the examiner from the Examination Department shall inform the applicant thereof and shall give him three months to submit his comments. If the applicant fails to respond or his arguments are groundless, a decision shall be taken to refuse grant of a patent.

**Art. 46b. Request for Search and Examination** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) Until the expiration of 13 months from the filing date of the application or the priority date, as appropriate, the applicant may file a search and examination request.

(2) Along with the request referred to in paragraph (1), the applicant shall pay a search and examination fee, as well as a publication fee for the application. In case of failure to pay the fees at the time of filing the request, they may still be paid at twice the rate within one month following the filing date of the request referred to in paragraph (1).

(3) Where no request under paragraph (1) is filed with regard to the application, and/or the fees referred to in paragraph (2) are not paid, the application may be transformed into an application for utility model registration at the request of the applicant, which shall be filed prior to the expiration of 15 months from its priority date in accordance with a procedure as laid down in the Regulation referred to in Article

34(1). If no such request is filed, the application shall be deemed to be withdrawn and the applicant shall be informed thereof.

(4) A patent application relating to the subject matter referred to in Article 73(5) may not be transformed into an application for utility model registration according to paragraph (3). Where a transformation request is received with respect to such application, an examiner from the Examination Department shall inform the applicant of the transformation inadmissibility and shall give him one month to submit his comments and corrections. If the applicant fails to respond or his arguments are groundless, the transformation request shall not be granted and the patent application shall be deemed to be withdrawn.

**Art. 46c. Publication of a Mention of Applications**

(1) (*new, State Gazette No. 64/2006, in force as from 09.11.2006*) A mention shall be published in the Official Bulletin of the Patent Office of an application with respect to which a request has been filed and the fees have been paid under Article 46b, such publication following expiration of the eighteenth month after the filing date or the priority date, as appropriate, except in those cases where:

1. the application is withdrawn according to Article 43, considered withdrawn according to Article 45a(4) and Article 46(2), the proceedings therein are terminated under Article 46(1), Article 46a(1) or Article 47(4), or refused under Article 46a(2) or Article 47(3);
2. at the applicant's request accompanied by a document certifying payment of the prescribed fee, the mention of the application is published before expiration of such time limit;

(2) At the same time as publishing a mention of the application, the Patent Office shall provide access to its description, claims and drawings.

**Art. 46d. Objections from Third Parties** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

Within three months following publication of a mention of the application under Article 46c, any person may file written substantiated objections concerning the patentability of the subject matter of the application. The objecting persons may not be participants in the application proceedings.

**Art. 47. Search and Examination** (*title amended, State Gazette No. 64/2006, in force as from 09.11.2006*) (*amended, State Gazette No. 66/2002; amended, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) In respect of each application, for which a request has been filed and the fees have been paid as referred to in Article 46b, an examiner from the Examination Department shall investigate the state of the art in accordance with Article 8 and shall draw up a search report and a written statement concerning the patentability of the invention in correspondence with Article 6(1) and Article 7a in connection with Articles 8, 9 and 10.

(2) The report, the statement referred to in paragraph (1) and the written objections referred to in Article 46d, if any, shall be sent to the applicant no later than six months upon expiration of the term referred to in Article 46d, except for the cases where as a result of the search a conflict application was found under Article 8(3) or (4), and in such case the report and the statement shall be sent after its publication. The applicant shall dispose of three months to comment upon the statement and the objections received.

(3) Where it is determined in the statement referred to in paragraph (1) that the invention is not patentable within the meaning of Article 6(1) and Article 7a, for it does not satisfy the requirements of Article 8, 9 or 10, and the applicant fails to respond within the term referred to in paragraph (2), fails to remedy the deficiencies or his arguments are groundless, a decision shall be taken to refuse grant of a patent.

(4) Where the examiner from the Examination Department reveals that the invention applied for is patentable, but the specification and/or the patent claims do not comply with the requirements of Article 37(1) and/or Article 38, he shall invite the applicant to rectify them within a three-month time limit. If the applicant fails to make the necessary corrections within the prescribed time limit, or fails to reply or files a groundless objection, the examiner shall take a decision to terminate the proceedings in the application.

(5) Where, following the examination and the correspondence with the applicant, it is revealed that the invention is patentable and the requirements of Article 37(1) and Article 38 are satisfied, the examiner from the Examination Department shall invite the applicant in writing



to pay the fees referred to in Article 33(4) and Article 53.

(6) The examiner from the Examination Department shall take a decision to grant a patent, provided that the fees referred to in paragraph (5) are paid. If the applicant fails to pay the fees, the application shall be deemed to be withdrawn.

**Art. 47a. Transformation** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) The applicant may file a request for transformation of the patent application into an application for utility model registration before expiration of the term for payment of fees referred to in Article 53 or the term referred to in Article 56(1). The transformed application shall preserve the filing date and the priority date of the initially filed patent application, which is deemed to be withdrawn.

(2) The transformation referred to in paragraph (1) shall be effected in accordance with the requirements of Article 73(5) and following the procedure laid down in the Regulation referred to in Article 34(1). If the applicant fails to satisfy such requirements, the examiner from the Examination Department shall inform him thereof and shall give him three months to submit his comments and corrections. If the applicant fails to respond or his arguments are groundless, the transformation request shall not be granted and the patent application shall be deemed to be withdrawn.

**Art. 48. Extension of Time Limits** (*amended, State Gazette No. 45/2002; amended, State Gazette No. 66/2002; amended, State Gazette No. 64/2006, in force as from 09.11.2006*)

At the applicant's request, submitted before expiration of the time limits as laid down in Article 46(1), Article 46a, Article 47(2) and (4), Article 47a(2) and Article 58(2), such time limits may be extended by three months, but not more than twice, on payment of the prescribed fees.

**Art. 49. Renewal of Time Limits**

If time limits are not complied with due to special unforeseen circumstances, such time limits may be renewed at the applicant's request. The request shall be submitted within three months following the date on which the reason for failure to comply with the time limit no longer exists, but no later than one year after the expiration of

the exceeded time limit. The decision on renewal of the time limit shall be taken by the President of the Patent Office.

**Art. 50. Publication of a Mention of Application** (*deleted, State Gazette No. 64/2006, in force as from 09.11.2006*)

**Art. 51. Publication of a Mention of Patent Grant** (*amended, State Gazette No. 66/2002; amended, State Gazette No. 64/2006, in force as from 09.11.2006*)

A mention of the grant of a patent shall be published in the Official Bulletin of the Patent Office right after the expiration of three months following the decision taking date. A patent shall be granted and the description, claims and any drawings shall be published within one month following publication.

**Art. 51a. Access to Application** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

After the publication referred to in Article 51, any person shall be entitled to request and be allowed access to the application in a granted patent as filed.

**Art. 52. Other Publications**

The Patent Office shall publish in its Official Bulletin data on the legal status of applications and patent grants, fee rates, instructions, and the like.

**Art. 53. Fees for Grant and Publication of Patents** (*amended, State Gazette No. 66/2002; amended, State Gazette No. 64/2006, in force as from 09.11.2006*)

The publications referred to in Article 51 and the grant of a patent shall be subject to the payment of fees within a term of three months following receipt of the invitation referred to in Article 47(5). If the applicant fails to pay the fees within the prescribed time limit, he may do so subsequently, within a one-month period, at twice the normal rate.

## **Chapter V - Disputes**

### **Art. 54. Disputes Procedure**

Disputes arising from the creation, protection or use of inventions and utility models shall be considered and settled under administrative, court or arbitration procedures.

### **Art. 55. Administrative Procedure** *(amended, State Gazette No. 64/2006, in force as from 09.11.2006)*

(1) The following decisions may be appealed before the Disputes Department:

1. refusal to grant a patent under Article 46a(2) and Article 47(3);
2. suspension of the patent application procedure under Article 46(1), Article 46a(1) and Article 47(4);
3. suspension of the utility model registration procedure under Article 75d(3) and Article 75e(3);
4. refusal to register a utility model according to Article 75e(4).

(2) The Disputes Department shall also consider requests for:

1. invalidation of a granted patent;
2. cancellation of a utility model registration;
3. grant or termination of a compulsory license.

(3) The disputes consideration procedure shall be specified in a regulation of the Council of Ministers.

### **Art. 56. Time Limits for Appeal**

(1) *(amended, State Gazette No. 64/2006, in force as from 09.11.2006)*  
An appeal under Article 55(1) shall be filed by the persons concerned with the Disputes Department within three months of receipt of the decision, and it shall be accompanied by proof of payment of the prescribed fee.

(2) *(amended, State Gazette No. 64/2006, in force as from 09.11.2006)*  
A request under Article 55(2) shall be admissible throughout the term of validity of the patent or the utility model registration, and it shall be accompanied by proof of payment of the prescribed fee.

(3) *(deleted, State Gazette No. 64/2006, in force as from 09.11.2006)*

(4) In case of failure to comply with time limits or to pay fees, the

appeal and the request shall not be considered.

**Art. 57. Appeals Authority**

(1) Appeals shall be heard by specialized boards of the Disputes Department appointed *ad hoc* by the President of the Patent Office.

(2) Decisions on appeals under Article 55(1) shall be taken by a board of three experts, of which one shall be a legal expert, while decisions on appeals under Article 55(2) shall be taken by a board of five experts, of which two shall be legal experts.

**Art. 58. Proceedings Before the Appeals Department** (*amended, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) The Disputes Department shall begin proceedings within one month of receipt of the appeals or requests referred to in Article 55.

(2) The parties to the proceedings shall participate therein. Written and oral evidence shall be admissible. In the cases referred to in Article 55(2), the Disputes Department shall send a copy of the request to the patent owner or to the parties concerned and give them a three-month time limit to respond.

(3) With respect to appeals referred to in Article 55(1) and within a nine-month time limit, the board referred to in Article 57 shall:

1. uphold the decision of the Examination Department;
2. reverse completely or partially the decision of the Examination Department, and refer the application back for renewed consideration.

(4) The decision of the Examination Department taken after the second consideration of the application under paragraph (3), item 2 may be appealed before the Disputes Department within the term referred to in Article 56(1), and a decision as to substance shall be taken.

(5) After considering a request under Article 55(2) and within nine months following collection of all evidence related to the dispute, the board referred to in Article 57 shall take a decision to:

1. reject the request as being unjustified;
2. declare full or partial invalidation of the patent granted;
3. grant or terminate a compulsory license.
4. completely or partially cancel the utility model registration.

(6) The decisions of the board referred to in Article 57 shall be confirmed by the President of the Patent Office.

(7) The decisions referred to in paragraphs (3) to (6) shall be notified to the dispute parties within seven days.

(8) In the event of a declaration of partial invalidation of the granted patent under paragraph (5) item 2 or partial cancellation of the utility model registration under paragraph (5) item 4, the granted patent or the registration certificate respectively shall be replaced by a new one.

#### **Art. 59. Review by Court**

(1) (*amended, State Gazette No. 66/2002; amended, State Gazette No. 64/2006, in force as from 12.07.2006; concerning the replacement of "the Sofia City Court" by "the Sofia Administrative Court -- in force as from 01.03.2007, former text of Article 59, State Gazette No. 64/2006, in force as from 09.11.2006*) Any party adversely affected by the decision of the Disputes Department under Article 58(3)1 and Article 58(5) may, within three months following receipt of the decision, bring an appeal before the Sofia Administrative Court under the Code of Administrative Procedure.

(2) (*new, State Gazette No. 64/2006, in force as from 09.11.2006*) Decisions of the Examination Departments referred to in Article 46(1), Article 46a(1) and (2), Article 47(3) and (4), Article 75d(3), and Article 75e(3) and (4) may not be appealed in court, if they have not been appealed through administrative channels.

#### **Art. 60. Disputes to Determine the True Inventor** (*title amended, State Gazette No. 66/2002*)

(1) (*amended, State Gazette No. 66/2002*) Disputes to determine the true inventor shall be heard by the Sofia City Court.

(2) (*amended, State Gazette No. 66/2002; deleted, State Gazette No. 64/2006, in force as from 09.11.2006*).

(3) (*amended, State Gazette No. 64/2006, in force as from 09.11.2006*) Based on the enforceable court decision, the Patent Office shall enter the name of the inventor or inventors on the granted patent or registration certificate.

**Art. 61. Disputes Concerning the Service Nature of Inventions and Utility Models and Remuneration for Them**

(1) Disputes on the service nature of an invention or utility model within the meaning of Article 15 of this Law shall be heard by the Sofia City Court.

(2) (*supplemented, State Gazette No. 64/2006, in force as from 09.11.2006*) Based on the enforceable court decision, the entitled person may request, within a three-month time limit, that a patent or certificate for utility model registration be granted to him.

(3) (*supplemented, State Gazette No. 64/2006, in force as from 09.11.2006*) Claims under paragraph (1) shall be raised not later than one year after the date on which the grant of the patent or registration certificate becomes known.

(4) Disputes concerning the remuneration referred to in Article 15(5) and (6) shall also be heard as provided in paragraph (1).

**Art. 62. Disputes Concerning the Right to File an Application**

(1) Disputes concerning the right to file an application under Article 13 shall be heard in court proceedings or in arbitration proceedings.

(2) The Sofia City Court shall be competent to hear those disputes that are submitted to court.

**Art. 63. Disputes Concerning the Right of Prior Use and of Subsequent Use**

(1) Disputes concerning the right of prior use under Article 21 and the right of subsequent use under Article 22 shall be heard in court proceedings or in arbitration proceedings.

(2) The Sofia City Court shall be competent to hear those disputes that are submitted to court.

**Art. 64. Disputes Concerning Infringement of Exclusive Rights**

(1) (*amended, State Gazette No. 64/2006, in force as from 09.11.2006*) Disputes concerning infringement of exclusive rights shall be heard by the Sofia City Court.

(2) (*new, State Gazette No. 64/2006, in force as from 09.11.2006*) Where

the defendant in an infringement action has filed with the Patent Office a request for invalidation of the patent or cancellation of the utility model registration, the court shall suspend the proceedings until such time as a final decision is taken on the request.

(3) (*former paragraph (2), amended, State Gazette No. 64/2006, in force as from 09.11.2006*) Where the action is instituted by the applicant prior to the grant of a patent or utility model registration certificate, the proceedings shall be suspended until a decision is taken by the Patent Office.

(4) (*former paragraph (3), amended, State Gazette No. 64/2006, in force as from 09.11.2006*) In the cases referred to in the preceding paragraph, the Patent Office shall be required to reach a decision within one year following the date of notification of suspension of the court proceedings.

**Art. 65. Disputes to Ascertain the Fact of Implementation**

Disputes to ascertain the fact of implementation of a patented invention or utility model shall be heard under the ordinary judicial procedure.

**Art. 66. Disputes Concerning Remuneration for Compulsory Licenses**

Disputes concerning the amount of remuneration for the grant of a compulsory license shall be heard by the Sofia City Court.

## Chapter VI - International Applications Filed Under the Patent Cooperation Treaty

### Art. 67. Receiving Office

(1) (*amended, State Gazette No. 66/2002*) The Patent Office shall act as a receiving Office as defined in Article 2(xv) of the Patent Cooperation Treaty, hereinafter referred to as "the Treaty", for international applications filed by nationals of the Republic of Bulgaria or by applicants having their permanent address or head-quarters in the country.

(2) (*amended, State Gazette No. 66/2002*) An international application shall be filed in three identical copies in the English or Russian language. The application may be filed also in Bulgarian, and a translation thereof shall be supplied within a one-month period. The document certifying payment of fees and the priority document shall be filed in one copy each.

(3) (*amended, State Gazette No. 66/2002*) A fee shall be due to the Patent Office for conducting international correspondence in addition to the fees due for the international filing under the Treaty. The fee shall be paid within one month of the filing date. Failing that, the proceedings in the application shall be terminated.

(4) (*amended, State Gazette No. 59/2007, in force as from 01.03.2008*) Where an application is filed in less than three copies, the Patent Office shall make the missing copies against appropriate payment. Failure to effect that payment shall not be a reason to terminate the procedure, but the receiving Office shall be entitled to request that immediate execution be ordered under Article 418 of the Code of Civil Procedure on the basis of an extract from its accounting records.

(5) (*amended, State Gazette No. 64/2006, in force as from 09.11.2006*) In the cases referred to in Article 8(2)(b) of the Treaty, the procedure in the earlier national application (applications) for the same invention shall be terminated. If the national phase is entered into for the international application, the procedure in the earlier national application shall be terminated. Where a patent has been granted in such cases on the earlier national application, the patent shall lapse as of the date of entry into effect of the patent granted on the international application, to the extent that they are the same.



(6) (*amended, State Gazette No. 45/2002; amended, State Gazette No. 64/2006, in force as from 09.11.2006*) Where an international application is filed with the Patent Office of the Republic of Bulgaria in its capacity of a receiving office, and no earlier national application has been filed for the same invention, the international application shall be subjected to examination under the procedure of Article 45a. The procedure shall continue if the competent authority establishes that the invention is not secret. If the invention is secret, the application shall not be treated as international.

**Art. 68. International Searching Authority and International Preliminary Examining Authority**

(1) The Patent Office of the Republic of Bulgaria shall determine the International Searching Authority and the International Preliminary Examining Authority.

(2) Any applicant, as well as the Patent Office, may ask for a search on a national application to be carried out by an International Searching Authority. In such case, the description and the claims contained in the application shall be presented in the languages specified by the International Searching Authority, and the search fees shall be paid.

**Art. 69. Designated Office**

(1) The Patent Office of the Republic of Bulgaria shall act as a designated Office as defined in Article 2(xiii) of the Treaty where the Republic of Bulgaria is a designated State in an international application.

(2) (*amended, State Gazette No. 66/2002*) In order to enter the national phase, the applicant shall file the international application with the Patent Office within thirty-one months following the priority date, subject to the requirements of Article 35. Applications in which the Patent Office is a receiving office shall not be subject to the payment of filing fees when designating it.

(3) Applications which have entered the national phase shall be required to comply with the provisions of Articles 35, 36, 37, 38 and 39, within the time limits laid down in Article 46(1).

(4) The Patent Office shall carry out additional search on the

international application in cases where the search made by the International Searching Authority has been made for a part only of the invention. The prescribed fees for the additional search shall be paid within the time limits laid down in Article 46(1).

**Art. 70. Elected Office**

(1) The Patent Office shall be the elected Office as defined in Article 2(xiv) of the Treaty, where the Republic of Bulgaria is a State elected by the applicant in which he intends to use the results of the international preliminary examination.

(2) (*amended, State Gazette No. 64/2006, in force as from 09.11.2006*)  
Where the Republic of Bulgaria is elected, the applicant shall file the documents under Article 69(2) for entry into the national phase within 31 months of the priority date.

(3) (*deleted, State Gazette No. 64/2006, in force as from 09.11.2006*).

(4) The international preliminary examination report shall be translated into English in accordance with Article 36(2) of the Treaty if it is in a language other than those laid down in Article 67(2).

**Art. 71. Conversion of an International Application Into a National Application** (*amended, State Gazette No. 66/2002; amended, State Gazette No. 64/2006, in force as from 09.11.2006*)

Where a foreign receiving Office has refused to confer a filing date on an international application or has declared that the international application is deemed to be withdrawn or the designation of the Republic of Bulgaria is considered withdrawn, and the applicant files with the Patent Office a Bulgarian translation of the application and pays the fees referred to in Article 35(2), respectively Article 75(1)6, the international application shall be treated as a national patent application or utility model registration application in accordance with the provisions of this Law. This procedure shall equally apply in respect of an international application incorrectly declared by the International Bureau of the World Intellectual Property Organization (WIPO) to have been withdrawn.

**Art. 72. Publications**

(1) International applications published by the International Bureau of the World Intellectual Property Organization (WIPO), in which the

Republic of Bulgaria is a designated State, shall be included in the state of the art from the date of their publication, if such applications have not entered into the national phase.

(2) (*amended, State Gazette No. 64/2006, in force as from 09.11.2006*)  
The publication of a mention of an international application in the Bulgarian language shall have the same legal effects as the publication of a mention of a national application in accordance with Articles 46c and 52.

**Chapter VI "a" - EUROPEAN PATENT APPLICATIONS AND EUROPEAN PATENTS UNDER THE EUROPEAN PATENT CONVENTION** (*new, State Gazette No. 66/2002*)

**Art. 72a. Filing of European Patent Applications** (*new, State Gazette No. 66/2002*)

(1) European patent applications may be filed with the Patent Office of the Republic of Bulgaria or with the European Patent Office at Munich or its branch at The Hague, and they shall be filed in one of the languages referred to in Article 14 of the European Patent Convention, hereinafter referred to as "the Convention". Divisional applications shall be filed with the European Patent Office only.

(2) Applicants having a permanent address or principal place of business in the Republic of Bulgaria shall file European patent applications with the Patent Office, unless the application enjoys the priority of an earlier application filed with the Office.

(3) The Patent Office shall forward the European patent application to the European Patent Office.

**Art. 72b. Equivalence of European Filing with National Filing** (*new, State Gazette No. 66/2002*)

(1) A European patent application designating the Republic of Bulgaria, which has been accorded a date of filing and, where priority is claimed, a date of priority, shall be equivalent to a regular national filing with the Patent Office.

(2) Where the European patent application has been published by the European Patent Office, and after the applicant supplies a Bulgarian translation of the patent claims in triplicate together with the application bibliographic data and pays the publication fee, the Patent Office shall make the translation available to the public and shall publish a mention of the translation in the Official Bulletin.

(3) The applicant shall enjoy the rights under Article 18 from the date of the mention of the translation referred to in paragraph (2), subject to the provisions of Article 72c.

**Art. 72c. Effect of the European Patent** (*new, State Gazette No. 66/2002*)

(1) A European patent designating the Republic of Bulgaria shall confer on its owner from the date of publication of the mention of its grant

in the European Patent Bulletin the rights under this Law, provided that a Bulgarian translation of the description and the claims is supplied in triplicate and the publication fee is paid within three months following that date.

(2) The translation referred to in paragraph (1) shall comprise the title of the invention, the description, any drawings, and the patent claims.

(3) The translation shall be supplied together with data identifying the patent owner, the number of the European patent application, the publication number of the European patent, the number and date of the European Patent Bulletin, in which the mention of the grant of the patent was published.

(4) The Patent Office shall publish in the Official Bulletin a mention of the Bulgarian translation of the European patent and the translation itself.

(5) The provisions of this Article shall apply also to the European patent description and claims as amended during opposition proceedings under Article 102(3) of the Convention.

(6) The European patent shall have no effect in the territory of the Republic of Bulgaria from the filing date of the application if, within the term referred to in paragraph (1), the translation under paragraphs (1) and (5) is not supplied and/or the publication fee is not paid, or the requirements of paragraphs (2) and (3) are not satisfied and the shortcomings are not removed within two months following the notification of the Patent Office.

**Art. 72d. Authentic Text of European Patent Application or European Patent; Making Corrections in the Translation** (*new, State Gazette No. 66/2002*)

(1) Where the Bulgarian translation referred to in Article 72b and 72c confers protection, which is narrower than that conferred by the European patent application or European patent in the language of the proceedings before the European Patent Office, the text of the translation shall be the authentic text.

(2) Paragraph (1) shall not apply in European patent invalidation

proceedings.

(3) The applicant for or owner of a European patent may at any time supply a corrected translation, subject to the payment of the prescribed publication fee. The translated text shall be filed in triplicate. The Patent Office shall publish in the Official Bulletin a mention of the corrected translation received. Where the corrections concern the European patent claims, the corrected translation shall be made available to the public at the same time as the mention in the Bulletin is published, and if the corrections relate to the translation of the European patent, the latter shall be published again with the corrections made therein.

(4) The corrected translation shall have effect with respect to third parties as of the publication date of the mention.

(5) Any person who in good faith is using or has made the necessary preparations for using the invention, and such use would not constitute infringement of the application or patent in the original translation may, after the corrected text takes effect, continue such use in the course of his business or for the needs thereof without payment.

**Art. 72e. Maintenance Fees for European Patents** (*new, State Gazette No. 66/2002*)

European patent annuities shall be paid to the Patent Office of the Republic of Bulgaria in accordance with Article 33 for each patent year following the year, in which the European Patent Office publishes the mention of the grant of the European patent.

**Art. 72f. Conversion into a National Patent Application** (*new, State Gazette No. 66/2002*)

(1) (*supplemented, State Gazette No. 64/2006, in force as from 09.11.2006*) A European patent application designating the Republic of Bulgaria may, at the request of the applicant, be converted into a national patent application for an invention or into a national application for utility model registration, where:

1. the application is deemed to be withdrawn pursuant to Article 77(5) of the Convention;
2. the application is deemed to be withdrawn pursuant to Article 90(3) of the Convention for failure to supply a translation of the application in the language of the proceedings referred to in Article 14(2) of the

Convention.

(2) The conversion request shall be filed within the time limits referred to in Article 135(2) of the Convention.

(3) Within three months following the date of receipt of the request at the Patent Office, the applicant shall do the following:

1. (*supplemented, State Gazette No. 64/2006, in force as from 09.11.2006*) pay the fees referred to in Article 35(2), respectively Article 75(1)6, and

2. supply a Bulgarian translation of the European patent application as originally filed and, where appropriate, a corrected translation of the application as amended during proceedings before the European Patent Office.

**Art. 72g. Prohibition Against Simultaneous Protection** (*new, State Gazette No. 66/2002*)

(1) In the case of an invention disclosed in both a national patent and a European patent designating the Republic of Bulgaria, both patents having the same filing date, respectively the same priority date, and belonging to the same person or his successor in title, the national patent effect shall cease.

(2) Subject to the provisions of paragraph (1), the effect of the national patent shall cease to the extent to which it is identical with the European patent from the date, on which the term for giving notice of opposition to the European patent expires without any opposition having been filed, or from the date of entry into effect of the decision to keep the European patent in the opposition proceedings.

**Art. 72h. Invalidation of European Patent** (*new, State Gazette No. 66/2002*)

The decisions of the European Patent Office in proceedings for invalidation of a European patent designating the Republic of Bulgaria shall be valid in the territory of the Republic of Bulgaria.

**Art. 72i. Register of European Patent Applications and European Patents** (*new, State Gazette No. 66/2002*)

The Patent Office shall keep a register, which shall contain data on all European patent applications and European patents having effect in the territory of the Republic of Bulgaria, entries of any changes

in their legal status being effected in accordance with the ordinary procedure.



**Chapter VI "b" - SUPPLEMENTARY PROTECTION CERTIFICATES** (*new, State Gazette No. 64/2006, in force as from accession of the Republic of Bulgaria to the European Union*)

**Art. 72j. Grant of Supplementary Protection** (*new, State Gazette No. 66/2002, in force as from the date of accession of the Republic of Bulgaria to the European Union*)

(1) Supplementary protection certificates for products and devices enjoying patent protection shall be granted under the terms and procedure provided for in Regulation 1768/92/EEC of the Council and Regulation 1610/96/EC of the European Parliament and the Council.

(2) The certificate application shall be filed with the Patent Office of the Republic of Bulgaria. Fees shall be paid under the tariff referred to in Article 5(1) for filing of the application, grant and maintenance of the certificate, as well as for publications.

(3) The procedure of granting supplementary protection certificates shall be laid down in a regulation of the Council of Ministers.

(4) The provisions concerning representation under Article 3, right to file applications under Article 13, legal protection scope under Article 17, exclusive right contents under Article 19, limitations on the patent effect under Article 20, exhaustion of rights under Article 20a, right of prior use under Article 21, lapse of patent under Article 26(1), (2) and (4), infringement of patent rights and patent infringement proceedings under Articles 27 and 28, right to information under Article 28a, preparedness for licensing under Article 30, contractual and compulsory licenses under Articles 31 and 32, patent maintenance fees under Article 33, renewal of time limits under Article 49, disputes under Articles 54, 55(1), 56(1) and (4) and Articles 57 to 59, shall apply to supplementary protection certificates as well, unless otherwise provided for in the regulations referred to in paragraph (1).

## **Chapter VII - UTILITY MODELS**

**Art. 73. Patentable Utility Models** (*amended, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) Legal protection for utility models shall be granted through registration with the Patent Office. The registration shall have effect with respect to third parties as of the date of publication in the Official Bulletin of the Patent Office.

(2) The right to a registration shall belong to the person who has the right to file an application under Article 13.

(3) Utility models shall be registered, which are new, involve an inventive step and are susceptible of industrial application.

(4) The objects referred to in Articles 6(2) and (4) shall not be regarded as utility models, in so far as legal protection is sought for them as such.

(5) No utility model registration shall be granted to biotechnological inventions within the meaning of Article 7a, methods, chemical compounds or the use thereof, and the objects referred to in Article 7.

**Art. 73a. Novelty** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) A utility model shall be considered to be new if it does not form part of the state of the art.

(2) The state of the art shall be held to comprise:

1. everything made available to the public through use in the Republic of Bulgaria by means of a written or oral description or in any other way, anywhere in the world, before the filing date or the priority date, as appropriate, of the utility model application.

2. the contents of all national, European and international applications referred to in Article 8(3) and (4).

**Art. 73b. Disclosure Which is not Prejudicial to Novelty** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) A disclosure of the utility model shall not be prejudicial to novelty if it was carried out within twelve months preceding the filing date

or the priority date, as appropriate, of the application for registration by:

1. the applicant or his grantor;
2. a third party in an evident abuse with respect to the applicant or his grantor.

(2) The privilege under paragraph (1) may be claimed at any time.

**Art. 73c. Inventive Step** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

A utility model shall be considered to involve an inventive step if a person possessing ordinary knowledge and skills in the art cannot easily realize it on the basis of the state of the art under Article 73a(2) item 1.

**Art. 73d. Industrial Applicability** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

The industrial applicability of utility models shall be determined in accordance with Article 10.

**Art. 74. Term of Validity** (*amended, State Gazette No. 64/2006, in force as from 09.11.2006*)

The term of validity of a utility model registration shall be 4 years as of the filing date of the application. It may be extended by two consecutive three-year periods. The total term of validity may not exceed 10 years as of the filing date of the application.

**Art. 74a. Lapse of Registration** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

A registration shall lapse:

1. on expiry of the respective term under Article 74;
2. on relinquishment by the owner -- as from the date of receipt of the written relinquishment declaration.

**Art. 74b. Cancellation of Registration** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) A registration shall be cancelled at the request of any person, where:

1. the utility model does not satisfy the requirements of Article 73(3) in connection with Articles 73a, 73c and 73d;
2. the utility model falls under the provisions of Article 73(4) and

(5).

3. the disclosure of the essential elements of the utility model is not complete and clear enough so as to enable a person skilled in the art to realize it;

4. the subject matter of the registered utility model extends beyond the content of:

(i) the application as filed;

(ii) the original application from which the application for utility model registration was divided in accordance with Article 41;

(iii) the original patent application to which the utility model application has made reference under Article 75b;

(iv) the original patent application from which the utility model application was transformed under Articles 47a and 72f.

(2) If the grounds for cancellation refer to a part only of the claims, cancellation shall be partial. The scope of protection shall be restricted through making respective amendments to the claims, description and drawings.

(3) The cancellation of a utility model registration shall take effect as of the filing date of the application.

(4) A utility model registration shall be cancelled also where the owner did not have the right to file an application, this being established by an enforceable court decision. The person who has the right to file an application may request that the utility model be registered to him without lapse of the registration.

(5) A utility model registration may be cancelled also at the request of a person who is the defendant in infringement proceedings, where it has lapsed under Article 74a.

(6) The cancellation of a registration shall have no effect on:

1. final decisions on utility model infringement insofar as they have been enforced;

2. licensing contracts concluded and executed prior to the cancellation, unless otherwise agreed therein.

**Art. 74c. Compulsory License** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) A compulsory license shall be granted to a utility model owner,

where the utility model cannot be used without infringing the right in another utility model the owner of which refuses to grant a license under fair conditions.

(2) A compulsory license shall be granted to a patent owner, where the invention according to the patent cannot be used without infringing the right in a utility model the owner of which refuses to grant a license under fair conditions.

(3) The compulsory license treatment under Article 32 shall equally apply to registered utility models.

**Art. 74d. Disposal in Case of Parallel Protection** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) Where a patent is granted and a utility model is registered under the provisions of Article 75b, the disposal of any of the two rights shall be regarded as disposal of the other.

(2) Where one of the rights referred to in paragraph (1) has originated before the other, the disposal thereof shall have effect with respect to the later right too.

**Art. 74e. Infringement of Utility Model Rights** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

The infringement of utility model rights shall be governed by the provisions of Articles 27, 28 and 28a respectively.

**Art. 75. Filing of Utility Model Application** (*title amended, State Gazette No. 64/2006, in force as from 09.11.2006*) (*amended, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) An application for utility model registration shall be filed with the Patent office, and it shall comprise:

1. a request for registration;
2. a description of the utility model;
3. drawings, if needed;
4. claims;
5. an abstract;
6. a document certifying payment of the filing and examination fee.

(2) The application shall be accompanied by the following documents as well:

1. a Power of Attorney, where the application is filed through an industrial property representative;
2. a priority declaration and a priority certificate, where priority is claimed, as well as a document certifying payment of the priority fee;
3. a declaration as to the true inventor and for establishing the right to file, where the applicant is not the inventor.

(3) The documents shall be submitted in the Bulgarian language, except for the priority certificate referred to in Article 44(2); the description, drawings, claims and abstract shall be furnished in two copies. If the documents are filed in a language other than Bulgarian, the filing date may be maintained if they are furnished in the Bulgarian language within three months of that date. This term is non-extendable.

**Art. 75a. Filing Date** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

The filing date of the application shall be the date of receipt at the Patent Office of:

1. request for registration, containing the name and address of the applicant and the title of the utility model for which registration is sought;
2. description of the utility model;
3. drawings, if needed;
4. one or more claims.

**Art. 75b. Parallel Applications** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

The applicant in a patent application may also file an application for utility model registration for the same invention, subject to the provisions of Article 73(5), invoking the filing date and the priority date of the patent application. This right may be asserted before the expiration of two months of the date of receipt of the decision on the patent application under Articles 46(1); 46a(1) and (2); 47(3), (4) and (6), or of the decision on the patent application under Article 58(3)2 and (4) of the Examination Department or the Disputes Department, but not later than 10 years following the filing date of the patent application.

**Art. 75c. Requirements to the Application** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) In addition to the data referred to in Article 75a, item 1, the request shall contain also:

1. name and address of the inventor;
2. a declaration as to the true inventor;
3. name and address of the industrial property representative, if any;
4. data concerning the priority claim - number, date and country of the priority document;
5. a declaration with data identifying the patent application, where the application for utility model registration is filed in correspondence with Article 75b.

(2) The description shall contain an indication of the utility model title, its application, and one or more embodiments disclosing its technical essence. It may contain also an indication of the prior art, as far as known to the applicant, as well as the advantages of the utility model.

(3) The claims and abstract shall be governed by Articles 38 and 39.

**Art. 75d. Examination of the Formal Requirements** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) Within one month following the date of filing of the application by a Bulgarian citizen with a permanent address in the Republic of Bulgaria or a legal person with a principal place of business in the Republic of Bulgaria, the examination referred to in Article 45a shall be conducted.

(2) Within one month following the examination referred to in paragraph (1) or the date of filing of an application by a foreign applicant, any application bearing a filing date shall be subjected to examination as to its compliance with the requirements of Articles 75, 75b and 75c(1). If deficiencies are ascertained, the applicant shall be informed thereof and shall be given one month to correct them.

(3) Where the applicant fails to respond or to make the necessary corrections within the above time limit and/or his arguments are groundless, a decision shall be taken to terminate the procedure.

(4) Where the applicant fails to furnish the document certifying payment

of fees under Article 75(1)6 within the term referred to in paragraph (2), the application shall be deemed to be withdrawn.

(5) The presentation of the documents referred to in Article 75(2)2 shall be governed by Article 44.

**Art. 75e. Registration Procedure** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) An application satisfying the formal requirements shall be examined by an examiner from the Examination Department as to whether:

1. the application meets the requirements of Article 75c(2) and (3) and Article 40;
2. the utility model applied for registration falls under the provisions of Article 73(4) and (5);
3. the utility model as disclosed in the application is in evident contradiction with Article 10.

(2) If deficiencies are ascertained, the applicant shall be informed thereof and shall be given three months to furnish his arguments and/or make amendments to the application.

(3) If the applicant fails to respond or to amend the application so as to eliminate the drawbacks referred to in paragraph (1), item 1 within the prescribed time limit, and/or his arguments are groundless, a decision shall be taken to terminate the proceedings.

(4) If the applicant fails to respond or to amend the application so as to eliminate the discrepancies referred to in paragraph (1), items 2 and 3 within the prescribed time limit, and/or his arguments are groundless, a decision shall be taken to terminate the proceedings.

(5) Where no discrepancies are found as a result of the examination, or the discrepancies are eliminated, the applicant shall be invited to pay, within a one-month time limit, the fees for registration, issuing a registration certificate, publication of the description, drawings, claims and abstract, as well as a fee for publication in the Official Bulletin of the Patent Office. If the applicant fails to pay the fees, the application shall be deemed to be withdrawn.

(6) If all the fees are duly paid, a decision shall be taken within 14 days to register the utility model, and the latter shall be recorded



in the State Register of Utility Models.

(7) Where an application for utility model registration is filed in accordance with Article 75b, the decision to register it shall be taken on payment of the fees referred to in paragraph (5) and of a fee for extension of the term of validity of the registration for the period within which the applicant is invited to pay them.

**Art. 75f. State of the Art Search** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) The applicant may file a request for state of the art search, subject to payment of the prescribed search fee.

(2) During the term of validity of the utility model registration, any person may file a request for state of the art search, subject to payment of the prescribed search fee.

(3) Within three months following receipt of the request referred to in paragraphs (1) or (2), a search report shall be drafted, which shall be sent to the requesting person together with the materials found.

(4) The persons referred to in paragraphs (1) or (2) may file a request for utility model examination on payment of a fee and furnishing a search report under paragraph (3) or Article 47(1).

**Art. 75g. Suspension of Registration** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

Within three months following the filing date of the application, the applicant may request suspension of the utility model registration for a period of 15 months of the filing date or the priority date, as appropriate.

**Art. 75h. Extension of Terms** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

The term referred to in Articles 75d(2) or 75e(2) may be extended by three months, but only once, at the request of the applicant filed prior to expiration of such term and subject to payment of the prescribed fee.

**Art. 76. Extension of the Term of Validity of Registration** (*title amended, State Gazette No. 64/2006, in force as from 09.11.2006*) (*amended, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) The term of validity of a utility model registration shall be extended at the request of the owner accompanied by a document certifying payment of the prescribed fee.

(2) Each extension request shall be filed during the last year of the preceding term of validity of the registration.

(3) In case of failure to observe the term referred to in paragraph (2), the validity of the utility model registration may still be maintained if the owner files a request and pays the fee at twice the rate within 6 months following expiration of the term.

**Art. 77. Publications** (*title amended, State Gazette No. 64/2006, in force as from 09.11.2006*) (*amended, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) A publication shall be made in the Official Bulletin of the Patent Office within one month following entry of the utility models into the State Register.

(2) Within one month following the publication referred to in paragraph (1), a utility model registration certificate shall be issued and the description, drawings, claims and abstract shall be published.

(3) The Official Bulletin shall publish notifications of search reports and any changes in the legal status of the utility models.

**Art. 77a. Access to Application** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

Following the publication of a mention of the registration, any person shall be entitled to request access to the application for utility model registration as filed, as well as to the report referred to in Article 75f(3).

**Art. 78. Treatment of Utility Models** (*title amended, State Gazette No. 64/2006, in force as from 09.11.2006*) (*amended, State Gazette No. 64/2006, in force as from 09.11.2006*)

The provisions on inventions shall equally apply to utility models, unless otherwise provided in this Chapter, except for Articles 18, 22

and 30.

## Chapter VIII - Patent Office

### Art. 79. Status

(1) The Patent Office of the Republic of Bulgaria shall constitute the national State authority for the legal protection of the subject matter of industrial property, with headquarters in Sofia.

(2) (*new, State Gazette No. 64/2006, in force as from 09.11.2006*) The Patent Office shall be financed by the State budget. The budget receipts of the Patent Office shall come from fees collected for the activities performed by the Patent Office, rents, donations, and the like.

(3) (*new, State Gazette No. 64/2006, in force as from 01.01.2007*) Funds to the amount of 25 per cent of the annual salary finances rate according to the budget of the Patent Office shall be allotted for extra material stimulation of the administration personnel, such funds being included in the State Budget Law of the Republic of Bulgaria for the respective year. The procedure of granting such extra material stimulation shall be laid down in the organizational regulations of the Patent Office.

(4) (*former paragraph (2), State Gazette No. 64/2006, in force as from 09.11.2006*) The Patent Office shall be independent in its activities, and its final decisions on the protection of the subject matter of industrial property may be appealed before the courts in accordance with the relevant procedure.

(5) (*former paragraph (3), State Gazette No. 64/2006, in force as from 09.11.2006*) The Patent Office shall comprise a President, at least one vice-president, State examiners and employees.

(6) (*former paragraph (4), State Gazette No. 64/2006, in force as from 09.11.2006*) The President and his vice-presidents shall possess the following compulsory qualifications: over ten-year experience in the industrial property field, and higher technical or legal education. The First Vice-President shall have competency and experience in patent examination and shall possess patent qualifications.

(7) (*former paragraph (5), State Gazette No. 64/2006, in force as from 09.11.2006*) The President of the Patent Office shall be appointed by the Prime Minister.

#### **Art. 80. Principal Tasks**

The Patent Office shall carry out the following principal tasks:

1. examination and decisions in relation to the protection of the subject matter of industrial property;
2. (*amended, State Gazette No. 81/1999, in force as from 14.12.1999; supplemented, State Gazette No. 64/2006, in force as from 09.11.2006*) grant patents for inventions and certificates for utility model registration; certificates for industrial designs, trademarks, service marks, appellations of origin, and other documents for the protection of the subject matter of industrial property;
3. consider disputes on examination decisions, requests for invalidation of protection documents and grant and termination of compulsory licenses;
4. invalidation, grant and termination of compulsory licenses and dependence of protection documents;
5. (*new, State Gazette No. 64/2006, in force as from 09.11.2006*) protection of biotechnological inventions and utility models in cooperation with the National Industrial Microorganisms and Cell Cultures Bank;
6. (*former item 5, supplemented, State Gazette No. 64/2006, in force as from 09.11.2006*) represent the country in the relevant intergovernmental industrial property organizations, ensure fulfillment of the country's obligations in compliance with the Patent Offices' status as regulated by the international agreements, and pursue international cooperation in this field, including such cooperation in the performance of industrial property searches and examination;
7. (*former item 6, amended, State Gazette No. 64/2006, in force as from 09.11.2006*) effect publications and issue a bulletin in accordance with this Law and the international agreements; conduct the international exchange of patent documents; establish and maintain industrial property information systems, and provide information services in connection with such industrial property;
8. (*former item 7, State Gazette No. 64/2006, in force as from 09.11.2006*) issue regulations and instructions within the competence of the Patent Office, and propose schedules of fees for the activities and services provided by the Office;
9. (*former item 8, State Gazette No. 64/2006, in force as from 09.11.2006*) keep the State registers of protected industrial property;
10. (*former item 9, State Gazette No. 64/2006, in force as from 09.11.2006*) manage the Industrial Property Fund to be raised from

donations, own finances and other revenue;

11. (*former item 10, amended, State Gazette No. 64/2006, in force as from 09.11.2006*) perform training of staff in the field of industrial property;

12. (*new, State Gazette No. 64/2006, in force as from 09.11.2006*) stir public awareness in the field of industrial property and promote the legal protection of industrial property and the innovation activity.

#### **Art. 81. President**

(1) The President shall manage the Patent Office and shall be responsible for the performance of the tasks of the Office; he shall issue the internal organizational regulations of the Office; he shall appoint the staff and exercise official supervision over them; he shall represent the Patent Office in the international organizations and unions; he shall sign bilateral and regional treaties with foreign patent offices.

(2) (*new, State Gazette No. 64/2006, in force as from 09.11.2006*) The President may, by means of a written order, delegate his powers to a vice-president.

(3) (*former paragraph (2), amended, State Gazette No. 64/2006, in force as from 09.11.2006*) The President of the Patent Office shall pursue cooperation with non-profit organizations in the field of industrial property.

#### **Art. 82. Structure**

(1) To assume the tasks set out in this Law, the Patent Office shall be required to establish main departments for:

1. examination of the subject matter of industrial property;
2. appeals;
3. legal matters;
4. patent information and publishing activity.

(2) The Patent Office shall compile, maintain and store a central patent file, for the purposes of examination, services to industry and international patent documentation exchange, known as the Central Patent Library.

(3) The President of the Patent Office shall determine the structure and staffing of the Office.

**Art. 83. Employees**

(1) Only persons of Bulgarian citizenship may be appointed employees of the Patent Office.

(2) (*amended, State Gazette No. 64/2006, in force as from 09.11.2006*) Only persons with higher education and a patent law specialization, with not less than three years' experience in the field of examination, who have passed an examination in the Patent Office may be appointed State examiners entitled to take decisions on industrial property applications or final decisions on disputes. The conditions and procedure of conducting the examination shall be specified in an Act of the President of the Patent Office.

(3) (*deleted, State Gazette No. 64/2006, in force as from 09.11.2006*).

(4) (*new, State Gazette No. 64/2006, in force as from 09.11.2006*) The employees of the Patent Office shall not be entitled to file applications for the protection of industrial property or to be mentioned as inventors or co-inventors for the time of their employment and one year after termination thereof.

**Chapter VIII "a" - Border Controls** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

**Art. 83a. Grounds and Scope of Application** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) The customs authorities shall detain goods carried across the State boundary, where there is good reason to believe that they are infringing a patent, supplementary protection certificate or registered utility model.

(2) The measure controls shall not apply to goods, which are not covered by the patent effect under Article 20 or which are made with the consent of the owner of the patent, supplementary protection certificate or registered utility model.

(3) (*in force as from the accession of the Republic of Bulgaria to the European Union*) The provision of paragraph (2) shall apply only if and insofar it does not contradict the provisions of Regulation 1383/2003/EC of the Council.

**Art. 83b. Conditions for Border Controls Implementation** (*new, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) Border controls shall be implemented at the written request of the owner of the patent or registered utility model, such request being addressed to the Customs Agency. Where the owner of the patent, supplementary protection certificate or registered utility model has a permanent address or principal place of business outside the country, he shall give in the request an address for service in the territory of the Republic of Bulgaria.

(2) The request referred to in paragraph (1) shall contain a detailed description of the goods. It shall be accompanied by a copy of the patent for invention, supplementary protection certificate or utility model certificate, as well as by a document certifying the validity thereof, such document being issued by the Patent Office.

(3) Requests shall be considered and border controls shall be implemented subject to the payment of fees collected by the customs authorities, the amount of such fees being specified by the Council of Ministers.



(4) The customs authorities shall bear no responsibility, when exercising control, for being unable to identify the goods whose detention is requested, or for their *bona fide* acts in detaining the goods.

(5) The procedure for implementing border controls shall be laid down in a regulation of the Council of Ministers.

## Chapter IX - Administrative Penal Provisions

### Art. 84. Penalties

(1) (*amended, State Gazette No. 11/1998; amended, State Gazette No. 45/2002; amended, State Gazette No. 64/2006, in force as from 09.11.2006*) A person who publishes the essential features of a secret patent application under Article 24 or who files an application abroad contrary to the provisions of Article 25 shall be liable to a fine of 1000 to 20 000 levs.

(2) (*new, State Gazette No. 64/2006, in force as from 09.11.2006*) A person who fails to satisfy his obligation referred to in Article 28a(5) shall be liable to a fine of 300 to 500 levs or a property sanction of 600 to 1 000 levs.

(3) (*former paragraph (2), State Gazette No. 64/2006, in force as from 09.11.2006*) An organ of the Patent Office shall draw up a statement concerning any offense. The penalty shall be ordered by the President of the Patent Office and may be appealed under the provisions of the Law on Administrative Offenses and Penalties.

## **Additional Provisions**

**§ 1.** (new, *State Gazette No. 64/2006, in force as from 09.11.2006*)

For the purposes of this Law:

1. "Essentially biological process" is a process for the production of plants or animals, if it consists completely of natural phenomena, such as cross-fertilization (cross-breeding) or selection.
2. "Microbiological process" is any process that comprises, is applied to or leads to obtaining biological material.
3. "Biological material" is any material that contains genetic information and is capable of self-reproduction or reproduction in a biological system.
4. "Paris Convention" is the Paris Convention for the Protection of Industrial Property, signed on 20 March 1883 in Paris, with the amendments thereto, pursuant to the Decision of the Council of Ministers for Accession of the People's Republic of Bulgaria to the Lisbon Version of the Convention, ratified by Decree No. 663/1965 of the Presidium of the National Assembly (*State Gazette No. 75/1965*).
5. "Budapest Treaty" is the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, signed on 28 April 1977 in Budapest, ratified by Decree No. 903/1978 of the Council of State (*State Gazette No. 38/1978*).
6. "Patent Cooperation Treaty" is the Patent Cooperation Treaty, concluded on 19 June 1970 in Washington, ratified by Decree No. 2933/1983 of the Council of State (*State Gazette No. 77/1983*).
7. "European Patent Convention" is the Convention for the Grant of European Patents (European Patent Convention) of 5 October 1973, ratified by a validating statute of the National Assembly (*State Gazette No. 15/2002*).
8. "Generic medical product" is a medical product with the same qualitative and quantitative composition with respect to the active substances and the same medicinal form as the referential medical product, and its bioequivalence to the referential medical product is proved by appropriate tests for bioanalytical ability. The different peroral medicinal forms with immediate liberation are regarded as the same medicinal form. The various salts, esters, ethers, isomers, composites of isomers, complexes or derivatives of an active substance shall be regarded as the same active substance, unless they differ substantially in terms of harmlessness and/or efficacy.

## **Transitional and Final Provisions**

**§ 2.** *(former § 1, State Gazette No. 64/2006, in force as from 09.11.2006)*

(1) This Law shall apply to applications for patents for inventions and utility models filed after its entry into force and to pending requests for patents filed with the Patent Office prior to the date of its entry into force.

(2) Pending applications for inventors' certificates filed with the Patent Office prior to the entry into force of this Law may be converted, with the same priority, into applications for patents for inventions or utility models at the request of the person entitled to file an application under Article 13 of this Law. The request shall be filed with the Patent Office within three months of the date on which the Patent Office notified the applicant, but no later than six months of the date of entry into force of this Law.

(3) Applications for inventors' certificates for which no requests for conversion have been submitted under the preceding paragraph shall be deemed to have been withdrawn and the procedures concerning them shall be terminated.

**§ 3.** *(former § 2, State Gazette No. 64/2006, in force as from 09.11.2006)*

(1) Inventors' certificates granted prior to the date of entry into force of this Law shall have a term of validity of 15 years, starting from the filing date. The same term of validity shall also apply to unpublished inventors' certificates.

(2) During the term of validity in accordance with the preceding paragraph, inventors' certificates may be converted into patents for inventions at the request of the inventor, subject to the provisions of Article 7. For inventors' certificates granted for service inventions, conversion may be requested by:

1. the user of the invention;
2. the author of the invention;
3. the organization in which the invention has been made, where such organization is not the user.

(3) Requests under the preceding paragraph shall be submitted to the Patent Office within six months of the date of entry into force of this Law.

(4) The Patent Office shall grant a patent to one only of the applicants, observing the order of the entitled persons as laid down in paragraph (2).

(5) If, within the time limit under paragraph (3), no request for conversion is submitted, any person concerned, but excluding foreigners, may request the grant of a patent in his favor. The request shall be submitted no later than one year after the expiration of the time limit referred to in paragraph (3), and a patent shall be granted to the person submitting the first request.

(6) The rights deriving from patents under paragraphs (4) and (5) shall become effective as from the date of the decision on conversion. Persons who have made use of the invention before the date of conversion of the inventor's certificate, but after the filing date of the application for the inventor's certificate shall not enjoy the right of prior use under Article 21.

(7) *(deleted, State Gazette No. 66/2002).*

(8) Inventors' certificates which have not been converted into patents under the preceding paragraphs shall lapse.

(9) Property and non-property rights of discoverers, authors of accepted and implemented inventions and innovations, and of persons who have made accepted and implemented economically efficient proposals, which originated prior to the entry into force of this Law, shall be subject to the provision applicable hitherto.

(10) *(amended, State Gazette No. 30/2006, in force as from 12.07.2007)*  
The decisions of the Patent Office on conversion of applications and inventors' certificates into patents may be appealed in accordance with the Code of Administrative Procedure.

**§ 4.** *(former § 3, State Gazette No. 64/2006, in force as from 09.11.2006)*  
Where inventors' certificates are converted into patents, fees shall be due for the grant of a patent and for the publication of the conversion. The annual fees for maintaining the patent shall become due as from the date of the patent grant.

**§ 5.** (*former § 4, State Gazette No. 64/2006, in force as from 09.11.2006*)

(1) For patents granted or applications filed abroad prior to the entry into force of this Law, and which relate to chemically or microbiologically obtained products, or to curative, cosmetic, food or flavoring substances, obtained by chemical or other methods, including genetic engineering, the Patent Office shall grant a patent at the request of the patentee or the applicant, provided that:

1. the product has not been put on sale in the territory of the Republic of Bulgaria up to the date of filing the patent application with the Patent Office;
2. no inventor's certificate has been issued in the Republic of Bulgaria for subject matter identical to that for which the grant of a patent is requested;
3. the applicant or the patentee is engaged in active commercial activities in the country of origin of the invention.

(2) A patent application in accordance with the preceding paragraph shall be filed with the Patent Office within nine months of the date of entry into force of this Law and shall contain:

1. the standard request form;
2. a standard declaration concerning the requirements of items 1 and 3 of the preceding paragraph;
3. a Bulgarian translation of the patent or the application and of the abstract in two copies;
4. a copy of the patent or a certified copy of the application issued by the Patent Office of the country concerned;
5. proof of payment of the fees;
6. power of attorney.

(3) The applicant or the patentee shall submit the documents referred to in the preceding paragraph within three months of the filing date of the application.

(4) A patent granted in the Republic of Bulgaria shall take effect:

1. on the filing date of the application in accordance with paragraph (2), where a patent has been granted abroad;
2. on the date of receiving a notification on the grant of a patent for an application filed abroad.

(5) A patent granted in accordance with the procedure and conditions laid down in the preceding paragraph shall lapse upon expiration of

the term of the patent granted in the country concerned, or on the date of a declaration of invalidity of the patent.

(6) Exceeded time limits under paragraphs (2) and (3) may not be renewed.

(7) Patent renewal fees shall be paid in accordance with the year of the patent in the country in which it was granted.

**§ 6.** (*former § 5, State Gazette No. 64/2006, in force as from 09.11.2006*) Patents for inventions and additional patents granted before this Law entered into force shall maintain the term of validity afforded by the Law applicable at the time they were granted.

**§ 7.** (*former § 6, State Gazette No. 64/2006, in force as from 09.11.2006*) (1) In Article 48 of the Law on Trademarks and Industrial Designs (*promulgated in State Gazette No. 95 1967; amended, No. 55 of 1975 and No. 56 of 1986*) the words "Bulgarian Chamber of Commerce" shall be amended to read "industrial property representative."

(2) The Bulgarian Chamber of Commerce and Industry shall continue to act as an industrial property representative for up to six months after this Law has entered in force. Within that same period, foreign applicants shall appoint a representative from the Register of Industrial Property Representatives. Upon the expiration of this period, the Bulgarian Chamber of Commerce and Industry shall hand to the Patent Office all those files on industrial property for which there is no authorized representative. The President of the Patent Office shall distribute those files to authorized industrial property representatives.

**§ 8.** (*former § 7, State Gazette No. 64/2006, in force as from 09.11.2006*) The time limit for the submission of invalidation actions under Article 55(2) shall also be valid for inventors' certificates granted before this Law entered in force.

**§ 9.** (*former § 8, State Gazette No. 64/2006, in force as from 09.11.2006*) The conditions for the making and use of useful proposals which do not enjoy special legal protection shall be determined by a contract concluded by the parties involved.

**§ 10.** (former § 9, State Gazette No. 64/2006, in force as from 09.11.2006)

The name of the Institute of Inventions and Rationalizations (INRA) shall be changed to the Patent Office of the Republic of Bulgaria.

**§ 11.** (suppl. State Gazette No. 81/1999, in force as from 14.12.1999; former § 10, amended, State Gazette No. 64/2006, in force as from 09.11.2006)

The Council of Ministers shall issue the Regulation under Article 3 of this Law and a Secret Patents Regulation.

**§ 12.** (former § 11, State Gazette No. 64/2006, in force as from 09.11.2006)

This Law supersedes:

1. the Inventions and Rationalizations Law (promulgated in State Gazette, No. 81/1968; amended, No. 92/1969, No. 28/1982 and No. 56/1986);
2. the Law on Discoveries, Inventions and Innovation Proposals (promulgated in Izvestiya, No. 10/1961; amended, State Gazette No. 81/1968).

**§ 13.** (former § 12, State Gazette No. 64/2006, in force as from 09.11.2006)

This Law shall enter into force on June 1, 1993, except for Article 3.

**§ 14.** (former § 13, State Gazette No. 64/2006, in force as from 09.11.2006)

This Law shall be executed by the President of the Patent Office.



**TRANSITIONAL AND FINAL PROVISIONS of the Law on the Amendment of the Patent Law** (*published in State Gazette No. 66/2002, in force as from 9 July 2002*)

**§ 42.**

(1) This Law shall apply to patent applications for inventions and utility models filed after entry into effect of the Law, as well as to pending applications.

(2) Requests for invalidation of patents for inventions relating to methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body, regardless of when the patents were granted, shall be considered with a view to the provisions of the law applicable during the time of examination of the application until such time as the final decision was taken.

**§ 43.**

Legal protection granted by patents for inventions relating to methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body shall reserve its effect until expiration of the lifetime of the patents with the restraint provided by the law, under which the decision to grant a patent was taken.

**§ 44.**

Applicants having filed applications for inventions or utility models prior to the entry into effect of this Law shall enjoy the privilege referred to in the wording of Article 11 prevailing hitherto.

**§ 45.**

Any proceedings in declarations for discoveries under the abrogated § 2(7) of the Transitional and Final Provisions shall be terminated. The Patent Office shall, at the request of the authors, publish in its Official Bulletin the bibliographic data as contained in the declarations and shall make all declaration materials available to the public.

**§ 46.** (*amended, State Gazette No. 68/2002*)

The Law shall enter into force on the day of its promulgation in the *State Gazette*, except for § 20, item 1 (concerning Article 33(1), (2) and (3)) that shall take effect six months after entry into force of

this Law.

**TRANSITIONAL AND FINAL PROVISIONS of the Code of Administrative Procedure** (published in State Gazette No. 30/2006, in force as from 12 July 2006)

**§ 101.**

The Patent Law (promulgated in State Gazette No. 27/1993; amended, No. 83/1996, No. 11/1998, No. 81/1999, No. 45/2002, No. 66/2002, No. 17/2003) shall be amended as follows:

.....

2. The words "Law on Administrative Procedure" shall be replaced by "Code of Administrative Procedure".

.....

**§ 142.**

The Code shall take effect three months after its promulgation in the State Gazette, except for:

1. Title Three, § 2, item 1 and § 2, item 2 -- concerning the abrogation of Chapter II "Appeal in Court"; § 9, items 1 and 2, § 11, items 1 and 2, § 15, § 44, items 1 and 2, § 51, item 1, § 53, item 1, § 61, item 1, § 66, item 3, § 76, items 1 to 3, § 78, § 79, § 83, item 1, § 84, items 1 and 2, § 89, items 1 to 4, § 101, item 1, § 102, item 1, § 107, § 117, items 1 and 2, § 125, § 128, items 1 and 2, § 132, item 2, § 136, item 1, as well as § 34, §35, item 2, § 43, item 2, § 62, item 1, § 66, items 2 and 4, § 97, item 2 and § 125, item 1 - concerning the replacement of the word "regional" by "administrative", and the replacement of "Sofia City Court" by "Sofia Administrative Court", coming into effect on 1 March 2007;
2. Paragraph 120, taking effect as of 1 January 2007;
3. Paragraph 3, taking effect as from the day of promulgation of the Code in the State Gazette.

**TRANSITIONAL AND FINAL PROVISIONS of the Law on the Amendment of the Patent Law** (*published in State Gazette No. 64/2006, in force as from 09.11.2006*)

**§ 74.**

(1) This Law shall apply to patent applications and applications for utility model registration filed after entry into effect of the Law, as well as to pending applications for patents for inventions and utility models.

(2) With respect to patent applications for inventions that are pending on the day of entry into force of this Law, no request under Article 46b shall be filed and the 6-month time limit referred to in Article 47(2) shall not apply.

(3) With respect to patent applications for utility models filed with the Patent Office prior to the date of entry into force of this Law and still pending on that date, may be converted into applications for utility model registration, at the request of the applicant. The request shall be filed with the Patent Office within three months of the day the Patent Office notifies the applicant, but no later than 6 months following entry into effect of this Law.

(4) The fees for examination of utility model patent applications shall not be refunded to the applicant, and the Patent Office shall perform searches with respect to all applications for which a conversion request has been received within the time limit referred to in paragraph (3). The search report accompanied by a statement for compliance with Articles 73a, 73c and 73d shall be sent to the applicant within six months following the filing date of the request.

(5) Utility model patent applications with respect to which no conversion request has been received shall be deemed to be withdrawn.

**§ 75.**

Granted utility model patents shall be kept valid in accordance with the procedure prevailing hitherto.

**§ 76.**

(1) Secret patents granted in accordance with the procedure prevailing hitherto shall be exempted from maintenance fees.

(2) Declassification and invalidation of granted secret patents shall be carried out in accordance with Article 24.

**§ 77.** *(in force as from the date of accession of the Republic of Bulgaria to the European Union)*

(1) The term of validity of patents granted under § 5 of the Transitional and Final Provisions shall be 20 years of the date of filing of the patent application in the respective country of origin.

(2) Within six months following the date of accession of the Republic of Bulgaria to the European Union, the owner of a patent granted under § 5 of the Transitional and Final Provisions and with a term of validity extended beyond the term referred to in paragraph (1) may file a request in accordance with the procedure and conditions laid down in Regulation 1768/92/EEC and Regulation 1610/96/EC for the grant of a supplementary protection certificate for the subject matter of the patent, the term of validity of the granted certificate being specified in accordance with Article 22 of Regulation 1768/92/EEC.

(3) Patents granted under § 5 of the Transitional and Final Provisions and with a term of validity extended beyond the term referred to in paragraph (1), with respect to which no request has been filed within the term under paragraph (2) or the grant of a supplementary protection certificate has been refused, shall lapse on expiry of the current patent year for which the respective annuity has been paid.

**§ 78.**

The Council of Ministers shall adopt the regulations referred to in Articles 24(11), 34(1), 37(3), 55(3) and 83b(5), and the Minister of Agriculture and Forestry shall issue the Regulation referred to in Article 20a(4) and (6) within a term of 6 months following entry into effect of this Law.

**§ 79.**

(1) A supplementary protection certificate may be granted for a medical product enjoying protection by a valid basic patent, for which the first authorization to place it on the market as a medical product has been obtained after 1 January 2000, provided that the certificate request is filed within 6 months following the date of accession of the Republic of Bulgaria to the European Union.

(2) A supplementary protection certificate may be granted for a plant protection product enjoying protection by a valid basic patent, for which the first authorization to place it on the market as a plant protection product has been obtained after 1 January 2000, provided that the certificate request is filed within 6 months following the date of accession of the Republic of Bulgaria to the European Union.

(3) The certificates referred to in paragraphs (1) and (2) shall be granted under the procedure referred to in Chapter Six "b".

**§ 80.**

After the date of accession of the Republic of Bulgaria to the European Union, the provision of Article 20, item 7 shall apply also to requests for placing on the market in any member State of the European Union or the European Economic Area.

**§ 81.**

(1) After the date of accession of the Republic of Bulgaria to the European Union, the owner or user of a patent or supplementary protection certificate for a pharmaceutical product, for which an application has been filed in a member State at a time when such protection could not be obtained for such product in the Republic of Bulgaria, may invoke the rights granted by that patent or supplementary protection certificate in order to prevent the import and circulation of such product in the member State or in the countries in which the product is enjoying patent or supplementary protection, even if the product was placed for the first time on the market in the Republic of Bulgaria by him or with his consent.

(2) Any person intending to import or circulate a pharmaceutical product covered by the scope of paragraph (1) in a member State in which that product enjoys patent or supplementary protection shall give proof in the import request to the competent authorities to the effect that a one-month notice has been addressed to the owner or user of such protection.

.....

**§ 83.**

This Law shall take effect three months after promulgation thereof in the *State Gazette*, except for:

1. paragraph 15 -- concerning Article 20a(1), § 55 -- concerning Chapter Six "b", § 70 -- concerning Article 83a(3), and § 77, which shall take effect on the date of accession of the Republic of Bulgaria to the European Union;

2. paragraph 66, item 2 -- concerning Article 79(3), which shall take effect on 1 January 2007.

**TRANSITIONAL AND FINAL PROVISIONS of the Law on Pharmaceuticals Serving Human Medicine** (*published in State Gazette No. 31/2007, in force as from 13.04.2007*)

**§ 37.**

This Law shall take effect on the day of its promulgation in the *State Gazette*, except for § 22, which shall take effect one year after entry into effect of this Law.



**TRANSITIONAL AND FINAL PROVISIONS of the Code of Civil Procedure**  
(published in State Gazette No. 59/2007, in force as from 01.03.2008)

**§ 61.**

The Code shall take effect on 1 March 2008, except for:

1. Part Seven "Special rules concerning the civil proceedings under the operation of the European Union Law";
  2. Paragraph 2(4);
  3. Paragraph 3 concerning the replacement of Chapter Thirty Two "A" "Special Rules for Recognition and Admission of Fulfillment of Decisions of Foreign Courts and of Foreign Bodies" by Arts. 307a to 307e, and replacement of Part Seven "Proceedings for Returning a Child or Exercising the Rights of Personal Relations" by Arts. 502 to 507;
  4. Paragraph 4(2);
  5. Paragraph 24;
  6. Paragraph 60,
- which will take effect three days after promulgation of the Code in the *State Gazette*.

## **Relevant Acts of the European Law**

DIRECTIVE 2004/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 April 2004 on the Enforcement of Intellectual Property Rights

DIRECTIVE 98/44/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 6 July 1998 on the Legal Protection of Biotechnological Inventions

REGULATION (EEC) No. 2380/74 OF THE COUNCIL of 17 September 1974 adopting provisions for the dissemination of information relating to research programmes for the European Economic Community

REGULATION (EEC) No. 1768/92 OF THE COUNCIL of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products

REGULATION (EC) No. 1610/96 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 June 1996 concerning the creation of a supplementary protection certificate for plant protection products

REGULATION (EC) No. 1383/2003 OF THE COUNCIL of 22 July 2003 concerning customs actions against action suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights.