

**NETHERLANDS**

**Patent Act**

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## **Chapter 1 General Provisions**

### **Article 1**

In this Kingdom Act and the provisions based on it the terms listed below shall have the following meaning:

*European Patent Convention*: the Convention on the Grant of European Patents signed in Munich, Germany, on 5 October 1973 (Treaty Bulletin 1975, 108, 1976, 101, and 2002, 64);

*European patent*: a patent granted pursuant to the European Patent Convention, insofar as it is granted in the Kingdom;

*European patent application*: a European patent application within the meaning of the European Patent Convention;

*Patent Cooperation Treaty*: the Treaty governing cooperation in respect of patents signed in Washington, United States of America, on 19 June 1970 (Treaty Bulletin 1973, 20);

*Office*: the office referred to in Article 15;

*Patent register*: the register referred to in Article 19 of this Act;

*Association*: the Dutch Association of Patent Agents (*Orde van octrooigemachtigden*) referred to in Article 23d;

*Our Minister*: Our Minister of Economic Affairs;

*Biological material*: material that contains genetic information and that can replicate itself or that can be replicated in a biological system;

*Microbiological process*: any process whereby microbiological material is used, which affects microbiological material or which results in microbiological material;

*Plant variety*: a variety within the meaning of Article 5(2) of Regulation (EC) No. 2100/94 of the Council of the European Union of 27 June 1994 on Community plant variety rights (Official EC Journal L 227);

*Natural resources*: the mineral and other non-living resources from the seabed and substratum, as well as living organisms of the sedentary type, *i.e.*, organisms that at the moment they can be harvested are stationary either on or under the seabed, or cannot move except in constant physical contact with the seabed or substratum.

### **Article 2**

1. Inventions that are new, that involve an inventive step and that are susceptible of industrial application shall be patentable.

2. The following in particular shall not be regarded as inventions within the meaning of the first paragraph:

- a. discoveries, as well as scientific theories and mathematical methods;
- b. aesthetic creations;
- c. schemes, rules and methods for performing mental acts, playing games or doing business, as well as computer programs; and
- d. presentations of information.

3. The second paragraph applies only insofar as it concerns the subject matter or activities referred to as such.

#### **Article 2a**

1. The inventions referred to in Article 2(1) are also taken to mean inventions that relate to a product that consists of or contains biological material or that relates to a process through which biological material is obtained, processed or used.

2. Inventions within the meaning of the first paragraph in any event include inventions with respect to:

- a. biological material that is isolated from its natural environment or is obtained using a technical process, even if that material occurs in nature;
- b. a part of the human body that is isolated or that is otherwise obtained using a technical process, including a sequence or partial sequence of a gene, even if the structure of that part is identical to that of a natural part;
- c. plants or animals, provided that the practicability of that invention is not technically limited to certain plant or animal varieties; or
- d. a microbiological or other technical process through which biological material is obtained, processed or used, or a product obtained using such a process.

#### **Article 3**

1. No patent shall be issued for:

- a. inventions whose commercial exploitation would be contrary to the public order or public morality;
- b. the human body in its various stages of its formation and its development, as well as the sole discovery of one of its parts, including a sequence or partial sequence of a gene;

- c. plant or animal varieties;
- d. essentially biological processes consisting entirely of natural phenomena such as hybridisations or selections in order to produce plants or animals and the products obtained thereby;
- e. inventions that lead to an infringement of Articles 3, 8(j), 15(5) and 16(5) of the Convention on Biological Diversity; or
- f. methods of treating the human or animal body by means of surgery or medical treatment and diagnostic methods that are applied to the human or animal body, with the exception of products, in particular substances or compositions, for the application of such methods.

2. Inventions whose commercial exploitation would be contrary to the public order or public morality within the meaning of paragraph (1)(a) in any event include:

- a. methods to clone human beings;
- b. methods to change the germinal genetic identity of human beings;
- c. the use of human embryos;
- d. methods to change the genetic identity of animals that would lead to those animals suffering without that yielding considerable medical benefit for human beings or animals, as well as the products acquired thereby; and
- e. methods that endanger the life or the health of human beings, animals or plants or that cause serious damage to the environment.

3. The commercial exploitation of an invention is not contrary to the public order or public morality on the ground of the mere fact that the exploitation is prohibited under or by virtue of any statutory provision.

4. By general order in council for the Kingdom, the list contained in paragraph (2) may be supplemented with other inventions whose commercial exploitation is deemed to be contrary to the public order or public morality.

#### **Article 4**

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

2. The state of the art shall comprise everything made available to the public by means of a written or oral description, by use or in any other way before the date of filing of the application.



3. The state of the art shall also comprise the content of previously filed patent applications that have been entered in the patent register pursuant to Article 31 on or after the date referred to in paragraph (2) above.

4. The state of the art shall also comprise the content of European patent applications and of international applications as referred to in Article 153(3) to (5) of the European Patent Convention, the date of filing of which, pursuant to Article 54(2) and (3) of that Convention, precedes the date referred to in paragraph (2) and that have been published pursuant to Article 93 of that Convention or Article 21 of the Patent Cooperation Treaty on or after that date.

5. Notwithstanding the provisions contained in paragraphs (1) to (4) above, substances or compositions included in the state of the art may be patented insofar as they are intended for use in one of the methods referred to in Article 3(1)(f), provided that their use for any method referred to in that paragraph is not included in the state of the art.

6. Without prejudice to the provisions contained in paragraphs (1) to (4), the substances or compositions as referred to in paragraph (5) may be patented for a specific application in a method as referred to in Article 3(f) provided that such application is not included in the state of the art.

#### **Article 5**

1. For the purposes of Article 4 the disclosure of an invention shall be disregarded if it occurred no earlier than six months prior to the date on which the patent application was filed as a direct or indirect consequence of:

a. an evident abuse in relation to the applicant or his legal predecessor; or

b. the fact that the applicant or his legal predecessor displayed the invention at government sponsored or officially recognised exhibitions within the meaning of the Convention on International Exhibitions, signed in Paris, France, on 22 November 1928, as most recently amended the Protocol of 30 November 1972 (Treaty Bulletin 1973, 100), on the condition that the applicant declares upon filing his application that the invention has actually been displayed and submits proof thereof within a term to be set by general order in

council for the Kingdom and in accordance with provisions set by general order in council for the Kingdom.

2. Official government recognition of exhibitions in the Netherlands shall be accorded by Our Minister. Recognition of exhibitions in the Netherlands Antilles shall be accorded by the Government of the Netherlands Antilles.

#### **Article 6**

An invention shall be deemed to be the result of inventive activity if, for a person skilled in the art, it does not manifestly ensue from the state of the art. Documents as referred to in Article 4(3) and (4) that form part of the state of the art shall not be taken into consideration in assessing inventive activity.

#### **Article 7**

An invention shall be considered susceptible of industrial application if the subject of that invention can be made or used in any field of industry, including agriculture.

#### **Article 8**

Without prejudice to Articles 11, 12 and 13, the applicant shall be deemed to be the inventor and, in that capacity, to be the person entitled to the patent.

#### **Article 9**

1. A party who has duly filed an application for a patent or for a utility certificate or for the protection of a utility model in any of the countries that are members of the International Union for the Protection of Industrial Property or affiliated with the World Trade Organisation, in accordance with the laws in force in that country or in accordance with treaties concluded between two or more of the aforementioned countries, shall enjoy a right of priority within the Netherlands and the Netherlands Antilles during a period of 12 months from the filing date of the application with regard to the acquisition of a patent for the subject matter in respect of which the protection referred to above has been applied for. A country that, on the ground of a notification by the competent authority in that country, acknowledges a right of priority under equivalent conditions and with equivalent legal consequences as those referred to in the Convention for the Protection of Industrial Property

signed in Paris on 20 March 1883 (Treaty Bulletin 1974, 225, and Treaty Bulletin 1980, 31) shall be considered equivalent to one of the countries referred to in the first sentence. The foregoing shall apply *mutatis mutandis* to a person who has applied for an inventor's certificate if the relevant legislation provides an option regarding the grant of such a certificate or a patent.

2. An application within the meaning of paragraph (1) shall be taken to mean any application whose date of filing can be ascertained, regardless of the subsequent fate of the application.

3. If the person entitled to do so has filed more than one application for the same subject matter, only the first application shall serve as a basis for claiming a right of priority. Nevertheless, a subsequent application for protection in the same country may serve as a basis for claiming a right of priority, provided that, on the filing date of the subsequent application, the previous application has been withdrawn, abandoned or refused without having been disclosed to the public and without leaving any rights outstanding, and provided it has not served as a basis for claiming a right of priority. If a right of priority based on a later application is invoked, the first application may not subsequently serve as a basis for claiming a right of priority.

4. For the purposes of Articles 4(2), (3) and (4) and Article 6, the effect of the right of priority shall be that the application for which this right exists shall be deemed to have been filed on the date of filing of the application that confers the right of priority.

5. The applicant may claim more than one right of priority, even if the rights of priority originated in different countries. The application for which one or more rights are claimed may also include elements for which no rights were claimed in the claims formulated in the application on which the claim to right of priority is based, provided that the documents related to the latter application refer to the product in question or the process in question with sufficient specificity.

6. A person wishing to avail himself of the right of priority must claim that right in writing at the time of the filing of the application or within 16 months after the date on which the

application being invoked has been filed, stating the date of that filing and the country in which or for which it has been filed.

7. An improvement or addition to a right of priority that has been invoked earlier must be requested within 16 months after the date on which the application being invoked has been filed.

8. Within 16 months after filing the application upon which his claim is based as referred to in paragraphs (6) and (7) he must submit to the Office the number of the application that he is invoking and a copy of that application in Dutch, French, German or English, or a translation of that application into one of those languages, unless the earlier application has been filed with the Office or the office referred to in Article 99, and, if he is not the party who filed the application serving as a basis for the priority claim, a document establishing his rights. The Office may require that the translation referred to in the previous sentence be certified.

9. The right of priority will lapse if the conditions stipulated in paragraphs (6), (7) or (8) have not been met.

#### **Article 10**

1. If for a patent granted pursuant to this Kingdom Act the right of priority of a patent application filed previously pursuant to this Kingdom Act is claimed, the patent granted on that application will have no legal consequences insofar as it concerns the same invention as the patent first mentioned.

2. Claims to establish the absence of legal consequences as referred to in paragraph (1) may be brought by any party.

3. Article 75(4), (8), first sentence, and (9) shall apply *mutatis mutandis*.

#### **Article 11**

The applicant shall not be entitled to a patent insofar as the content of his application has been taken from subject matter made or applied by another party or from descriptions, drawings or models belonging to another party without that party's consent. The latter party shall remain entitled to a patent to the extent that the

subject matter thus taken is patentable. For the purposes of Article 4(3) and (4), the application filed by the person who has so obtained the subject matter shall not be taken into consideration for the subject matter of an application filed by the party from whom the aforementioned subject matter has been so taken.

## **Article 12**

1. If the invention for which a patent application has been filed has been made by a person employed in the service of another party, the employee shall be entitled to the patent unless the nature of the service entails the use of the employee's special knowledge for the purposes of making inventions of the same kind as that to which the patent application relates, in which case the employer shall be entitled to the patent.

2. If the invention for which a patent application has been filed has been made by a person who performs services for another party in the context of a training course, the party for whom the services are performed shall be entitled to the patent unless the invention has no connection with the subject of the services.

3. If the invention has been made by a person carrying out research in the service of a university, college or research establishment, the university, college or research establishment in question shall be entitled to the patent.

4. For the purposes of Article 4(3) and (4), an application filed by a party who does not have a right to a patent shall be disregarded in respect of the subject matter of an application filed by the employer referred to in the last sentence of the first paragraph or by a party providing the opportunity to perform the services referred to in the second paragraph.

5. The provisions contained in paragraphs (1), (2) and (3) may be derogated from by written agreement.

6. In the event that the inventor cannot be deemed to have been compensated in the salary he earns or the pecuniary allowance he receives or in any extra remuneration he receives for not having been granted a patent, the party who is entitled to the patent on the basis of paragraphs (1), (2) or (3) will be obliged to grant him

equitable remuneration related to the pecuniary importance of the invention and the circumstances under which it was made. Any right of action on the part of the inventor in accordance with this paragraph shall lapse after the expiry of three years from the date of the grant of the patent.

7. Any stipulation that is in derogation from the provisions contained in the sixth paragraph shall be void.

#### **Article 13**

If an invention has been made by two or more persons working together by agreement, they shall have a joint right to a patent.

#### **Article 14**

1. Any person who has made an invention for which a patent application has been filed, but who cannot claim any title to a patent on the ground of Article 12(1), (2) or (3) or on the ground of an agreement concluded with the applicant or his predecessors in title, shall have a right to be named as the inventor in the patent.

2. Any stipulation that is in derogation from the provisions contained in the preceding paragraph shall be void.

## **Chapter 2 Processing of Patent Applications**

### **§1 General Provisions**

#### **Article 15**

1. An Office has been charged with implementing this Kingdom Act and other duties imposed under or by virtue of the law or binding international obligations. The Office is the Netherlands Patent Office (*Octrooi Centrum Nederland*). The Office is an institution of the Netherlands and it shall also serve, insofar as patents are involved, as the central depository for the Netherlands and the Netherlands Antilles within the meaning of Article 12 of the Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised in Stockholm, Sweden, on 14 July 1967 (Treaty Bulletin 1969, 144).

2. The structure and working methods of the Office will be determined by Our Minister.

#### **Article 16**

If the Office is closed on the last day of any term to be observed by or towards the Office in accordance with this Kingdom Act, that term shall be extended for the purposes of this Kingdom Act until the end of the next day on which the Office is open once again.

#### **Article 17**

1. The Office shall act as a receiving Office within the meaning of Article 2(xv) of the Patent Cooperation Treaty and shall perform its work in that capacity in accordance with the provisions contained in that Treaty.

2. The amount and the due date of the fees that can be levied pursuant to the Patent Cooperation Treaty and the related Regulations shall be set by general order in council for the Kingdom insofar as the Patent Cooperation Treaty grants the authority to do so. Additional regulations may be laid down by general order in council for the Kingdom with respect to the subject matter with regard to which the receiving office is empowered to stipulate provisions by virtue of the aforementioned Regulations.

#### **Article 18**

The designation or, in appropriate cases, the choice of the Kingdom in an international application as referred to in Article 2(vii) of the Patent Cooperation Treaty shall be deemed to be a request by the applicant to be granted a European patent.

#### **Article 19**

1. The Office shall be responsible for maintaining a patent register from which the current status with respect to patent applications and patents can be derived and from which information can be provided to third parties for that purpose.

2. Particulars concerning patent applications and patents shall be recorded in the register by virtue of this Kingdom Act. The register shall be open to inspection by any person, free of charge.

3. Additional regulations may be stipulated by general order in council for the Kingdom with respect to the register. Such regulations may provide that the registration of given particulars will be dependent upon the payment of an amount by the individual requesting the registration.

4. In return for payment of amounts to be set under or by virtue of a general order in council for the Kingdom, any individual may request written information regarding or certified extracts from the patent register or documents relating to a patent application or patent entered in the patent register, as well as copies of the latter documents.

#### **Article 20**

1. All the particulars recorded in the patent register shall also be reported in a journal to be published periodically by the Office.

2. Additional regulations may be fixed by general order in council for the Kingdom with respect to the provisions contained in the first paragraph.

#### **Article 21**

1. As from the time at which the patent application is entered in the patent register any party may inspect, free of charge, all the documents pertaining to the application or the patent granted as a



result of such an application that the Office has received or has sent to the applicant or to third parties in the context of the provisions contained in this Kingdom Act. As soon as possible, but in any event not before the application is entered in the patent register, the Office shall give notice of those documents in the journal referred to in Article 20.

2. Documents pertaining to an application that has not yet been entered in the patent register may be inspected only with the applicant's consent. However, it shall nonetheless be possible to inspect such documents without the applicant's consent if the party in question shows that the applicant has invoked the rights under the application against the party in question. This provision does not pertain to the patent applications referred to in Section 3 of this Chapter.

3. The declaration of the inventor stating that he does not wish to be recorded as the inventor in the patent may not be inspected.

#### **Article 22 [Deleted as from 1 May 2003]**

#### **Article 23**

1. If, despite taking all due care as required under the circumstances, the applicant for or holder of a patent or the holder of a European patent has not been able to observe a term with respect to the Office or the office referred to in Article 99, at his request the Office shall restore his rights if the failure to observe the term pursuant to this Kingdom Act has directly led to the loss of any right or means of redress.

2. The first paragraph shall not apply in respect of a failure to file the patent application within the term stipulated in Article 9(1) or a failure to observe with the term referred to in paragraph (3) below.

3. If a request relates to a failure to observe a term within the meaning of Article 9(6), (7) or (8), the request shall be submitted within two months after the term in question has lapsed. Other requests shall be filed as soon as possible, but in any event not more than one year after the term that was not observed has lapsed. The omitted act must be performed simultaneously with the request.

An amount to be set by general order in council for the Kingdom must be paid upon filing the request.

4. The Office shall record the restoration in the patent register.

5. A party will remain authorised, notwithstanding the patent, to continue performing the acts stipulated in Article 53(1) if the party in question has commenced, in or for his business, manufacturing or using an item in respect of which a patent is in force as a result of the restoration or has commenced implementing his decision to do so within the Netherlands or the Netherlands Antilles in the period between the loss of rights or means of redress and the restoration to the prior situation. Article 55(2) and (4) shall apply *mutatis mutandis*.

#### **§1a Patent Agents**

##### **Article 23a**

1. The Office shall be responsible for maintaining a register of patent agents from which it is possible to infer who is in compliance with the standards of professional competence for patent agents and can act as a patent agent on behalf of the Office, and from which information can be provided to third parties for that purpose.

2. Any person may be entered in the register as a patent agent upon request if that person has passed an examination and has handled patent applications for a period of at least three years under the responsibility of a patent agent or has successfully passed a proficiency test. The examination or proficiency test must have been taken no more than 10 years before the application is filed.

3. The Office shall determine the structure of the register. Any party may inspect the register free of charge.

4. Persons other than those who have been entered in the register of patent agents are prohibited from designating themselves in the market at large as being listed in that register.

5. The supervisory board may grant a dispensation from the obligation to take the examination or the proficiency test or the

obligation to handle patent applications for a period of at least three years under the responsibility of a patent agent.

6. Further regulations shall be stipulated by general order in council for the Kingdom with respect to the application to be entered in the register, the application for a dispensation, the assessment of the application by the supervisory board, the appeal to the Court of Appeal of The Hague, the Netherlands, against a negative decision rendered by the board, and entries into and deletions from the register.

#### **Article 23b**

1. The Office may be represented only by persons who have been entered as a patent agent in the register referred to in Article 23a, persons who have been registered with a court of law as a lawyer on the ground of Article 1 of the Dutch Counsel Act (*Advocatenwet*) and persons who have been registered as a lawyer with the Joint Court of Justice of the Netherlands Antilles and Aruba on the ground of Article 1 of the National Counsel Ordinance (*Advocatenlandsverordening*).

2. The director of the Office may demand that a lawyer provide for inspection the signed certificate of his having been sworn as a lawyer before allowing him to represent the Office.

3. In special cases the director of the Office may also allow persons other than those referred to in the first paragraph to represent the Office if such persons do not make such representation their profession or if they are authorised to act as counsel in patent cases in a Member State of the European Union or in another State that is a party to the Agreement on the European Economic Area and they represent the Office only on an occasional basis.

4. Unless rules that are in force under or by virtue of the law provide otherwise, a patent agent or a person who works under his responsibility is obliged to keep confidential all the information that comes to his attention in connection with his work as such. This obligation will continue to apply after the work in question has ended.

### **Article 23c**

1. There shall be a board of examiners to administer the examination and proficiency test referred to in Article 23a.

2. On the instructions of the board of the Association, Our Minister shall appoint the members of the board of examiners, in each case for a term of two years. Our Minister may remove a member prematurely for weighty reasons. The appointment and removal of members of the board of examiners shall be published in the journal referred to in Article 20.

3. The board of examiners shall consist of at least six persons. One-third of the members of the board of examiners shall be patent agents, one-third shall be employees of the Office, and one-third shall be technical or legal experts who are not members of the circle of patent agents and employees of the Office. No more than one-half of the members of the examination board may also be teachers involved in training future patent agents.

4. The board of examiners may set up committees from among its members to administer the examination or the proficiency test in parts.

5. The board of examiners shall determine the time at which persons must register for the examination and the proficiency test referred to in the first paragraph and the time at which and place where that examination and that proficiency test will be administered. The board of examiners will not administer all or part of an examination or proficiency test until the person taking all or part of the examination or the proficiency test has paid the amount due in that respect.

6. Further regulations shall be stipulated under or by virtue of a general order in council for the Kingdom with respect to:

a. permission to participate in and take the examination and the proficiency test and the amount owed by the person who wishes to take all or part of an examination or proficiency test; and

b. the knowledge that is tested by means of the examination and the proficiency test, the elaboration of the examination requirements by the board of examiners and the manner in which the examination or the proficiency test is administered.

#### **Article 23d**

1. There shall be an Association of patent agents, which will be constituted by all the persons who are entered in the register referred to in Article 23a.

2. The Association shall be charged with promoting the proper professional conduct of the members and their professional competence. Its duties shall also comprise protecting the honour and reputation of the profession of patent agent.

3. The Association shall be a public entity within the meaning of Article 134 of the Dutch Constitution.

#### **Article 23e**

1. The general meeting of the Association shall elect a management board from among its members, which will be charged with the day-to-day management of the Association and will be entitled to perform the acts of management and disposition with respect to the Association's assets.

2. The members of the management board shall retire every two years. They shall be eligible for immediate reappointment.

3. The Association's management board shall consist of a maximum of nine members. The Association's general meeting shall appoint the chairman, the secretary and the treasurer of the management board from among those members.

4. The chairman or the secretary of the board shall represent the Association at law and otherwise.

#### **Article 23f**

1. The Association's general meeting shall elect a supervisory board, which shall assess applications to be entered in the register of patent agents, which shall supervise the manner in which patent agents practise their profession, and which shall be charged with disciplinary proceedings in the first instance.

2. The members of the supervisory board shall retire every two years. They shall be eligible for immediate reappointment.

3. The Association's supervisory board shall consist of five members and five deputy members.

4. The chairman of the supervisory board shall be a lawyer, to be appointed by Our Minister on the instructions of the Association's general meeting. The Association's general meeting shall appoint the secretary of the supervisory board from among the members of the supervisory board.

#### **Article 23g**

1. The membership of the management board is incompatible with the membership or the deputy membership of the supervisory board.

2. The management board shall remove a member or a deputy member of the supervisory board from office if the member or the deputy member:

a. is permanently incapable of performing his duties as a result of an illness or infirmity;

b. is deleted from the register of patent agents;

c. is declared bankrupt, is declared subject to the debt rescheduling arrangement for natural persons or is placed in receivership;

d. is remanded into custody; or

e. is found guilty of a crime by a judicial decision that has become irrevocable or has been made subject to a measure that will result in his being deprived of his liberty pursuant to such a decision.

#### **Article 23h**

1. The Association's general meeting shall lay down the rules of procedure and rules of conduct for patent agents.

2. The rules of procedure shall in any event provide for:

a. the manner in which the management board and the supervisory board are elected;

b. the dismissal of a member of the management board for weighty reasons;

c. the holding of meetings of the Association; and

d. the amount of the membership fee that the members of the Association shall owe for their membership of the Association and the terms within which the membership fee shall be paid.

3. The general meeting shall lay down regulations with respect to the supervision of trainees by patent agents, the mutual obligations of the patent agent and the trainee, and the appointment by the supervisory board of a patent agent as the counsellor of a trainee who performs patent work outside the patent agent's office.

4. The general meeting may lay down regulations that are in the interest of the proper performance of the members' professional duties. Such regulations may relate only to:

a. the manner in which a patent agent's books and records must be structured, maintained and retained;

b. the collaboration of patent agents with other patent agents and with persons who practise another profession;

c. the publicity that patent agents may use in respect of their work; and

d. the obligation of patent agents to maintain their knowledge and insight in respect of the law governing industrial property and the supervision of the supervisory board in that respect.

5. Regulations shall not contain any provisions governing matters regulated under or by virtue of the law, shall not contain any obligations or stipulations that are not strictly necessary in order to achieve the goal intended by the regulation and shall not limit the operation of the market unnecessarily. If the subject of provisions contained in regulations is provided for under or by virtue of the law, those provisions will cease to apply by operation of law.

#### **Article 23i**

1. The rules of procedure, the rules of conduct for patent agents and the regulations, as well as any amendments to them, shall be sent to Our Minister for approval immediately after they have been adopted.

2. Our Minister may refuse to grant his approval for the rules of conduct for patent agents and the regulations, as well as any amendments to them, if they contain provisions that are contrary to the law or the public interest.

3. After Our Minister has granted approval, the rules of conduct for patent agents and the regulations, as well as any amendments to them,

shall be published in the journal referred to in Article 20. They shall enter into effect as from the first day of the second month after the date of the journal in which they have been published, or as from such earlier date as they themselves provide.

4. The patent agents are obliged to comply with the rules of conduct for patent agents and the regulations and to pay the membership fee that is due in connection with the membership of the Association within the term stipulated in that respect.

#### **Article 23j**

1. Before 1 October of each year the Association's general meeting shall adopt a budget for the subsequent calendar year.

2. Before 1 May of each year the Association's general meeting shall issue a financial report to Our Minister, accompanied by a declaration that it is accurate and in accordance with the law. That declaration shall be issued by an accountant within the meaning of Article 393 of Book 2 of the Dutch Civil Code (*Burgerlijk Wetboek*).

3. Before 1 May of each year the Association's general meeting shall draw up a report of the work, the general policy pursued, and the expediency and effectiveness of the work and the procedures of the Association in particular in the preceding calendar year. The report shall be sent to Our Minister.

4. The Association's general meeting shall make the documents referred to in paragraphs (2) and (3) generally available.

#### **Article 23k**

Upon request the Association's general meeting, the Association's management board, the supervisory board and the board of examiners shall provide Our Minister with the information that he requires to perform his duties. Our Minister shall be entitled to inspect business information and documents insofar as that is reasonably necessary for the performance of his duties.

#### **Article 23l**

1. The Association shall meet at least once each year to discuss matters that are relevant for patent agents.



2. The Association's meetings as referred to in paragraph (1) shall be open to the public unless the members of the Association who are present resolve on the ground of weighty reasons that the meeting shall be held behind closed doors. The meetings of the Association's management board and the supervisory board shall not be open to the public, except in a case as referred to in Article 23s(4).

#### **Article 23m**

1. A patent agent who is declared bankrupt, is declared subject to the debt rescheduling arrangement for natural persons or is placed in receivership shall be suspended by operation of law in respect of his right to represent the Association or to speak at hearings with regard to disputes during the bankruptcy, the application of the debt rescheduling arrangement for natural persons or the receivership. During that period of time he will also be suspended by operation of law as a member of the Association.

2. In the event that a patent agent is unable to represent the interests that are entrusted to him in that capacity, or in the event that he is deceased, and if no replacement has already been made, the chairman of the supervisory board shall designate a patent agent who will take the measures that are necessary under the circumstances for as long as the chairman considers necessary.

#### **Article 23n**

1. A patent agent who is guilty of any act or omission that is contrary to the duty of care that he is obliged to observe as a patent agent towards the parties whose interests he represents or should represent in that capacity, that is contrary to the Association's rules of procedure or rules of conduct or that is contrary to the conduct that befits a patent agent may be subject to one of the measures referred to in Article 23u, without prejudice to his liability on the ground of other statutory provisions.

2. Any act or omission that is contrary to the conduct that befits a patent agent shall in any event be taken to include collaborating in respect of patent-related matters with or employing a person:

a. in respect of whom it is known that his entry in the register referred to in Article 23a has been refused because there is a well founded fear that he will be guilty of any act or omission as referred to in paragraph (1);

- b. who has been divested of the right to represent the Association;  
or
- c. who, in spite of being unauthorised to represent the Association, has customarily posed as a representative in the Netherlands or the Netherlands Antilles.

**Article 23o**

1. The supervisory board shall handle any objection that has arisen against a patent agent, on the ground of a substantiated, written complaint that has been submitted to it.

2. If the chairman of the Association's management board is aware of an objection against a patent agent or a lawyer in respect of which no complaint has been submitted it may so inform the supervisory board, in which case the supervisory board shall handle the objection as a complaint and shall deem the chairman of the management board to be the complainant.

3. If the supervisory board is aware that a lawyer has been guilty of the conduct referred to in Article 46 of the Counsel Act while handling patent-related matters, it shall so inform the supervisory council, referred to in Article 22 of that Act, of the district in which the lawyer in question practises law.

4. The supervisory board shall not handle a complaint if the incident to which the complaint relates took place at least five years before the complaint was submitted.

**Article 23p**

1. If an objection has been raised against a patent agent the secretary of the supervisory board shall immediately issue a written notification to that effect to the patent agent against whom a complaint has been submitted.

2. The chairman of the supervisory board may immediately reject the complaint after a brief investigation, if necessary after hearing the complainant and the patent agent in question, by means of a substantiated decision if he is of the opinion that the complaint in question is manifestly inadmissible, manifestly unfounded or insufficiently weighty.

3. If the chairman of the supervisory board is of the opinion that a complaint can be settled amicably, he shall call the complainant and the patent agent in question to appear in order to determine whether such a settlement is possible. If an amicable settlement is possible it shall be laid down in writing and signed by the complainant, the patent agent and the chairman.

4. The chairman shall immediately notify the supervisory board of complaints that have not been settled amicably or that have not been rejected.

5. The secretary of the supervisory board shall immediately send the complainant and the patent agent in question a copy of the chairman's decision by registered letter.

#### **Article 23q**

1. A complainant whose complaint has been rejected by the chairman of the supervisory board may submit a written objection against the rejection to the supervisory board within 14 days after the date on which the copy of the decision has been sent, in which context he shall state and substantiate with which considerations of the chairman of the supervisory board he disagrees and may ask to be heard with respect to his objection.

2. If an objection is lodged against the decision of the chairman of the supervisory board in accordance with paragraph (1), the chairman of the supervisory board shall designate another member of the supervisory board to replace him in connection with the handling of the objection.

3. The decision of the chairman of the supervisory board shall be nullified as a result of the objection, unless the supervisory board declares the objection to be inadmissible or unfounded.

4. If the supervisory board is of the opinion that the complaint is manifestly inadmissible, manifestly unfounded or insufficiently weighty it may declare the objection to be inadmissible or unfounded without any further investigation, however not before the complainant who submitted the objection is given an opportunity to be heard.

5. The decision to declare the objection to be inadmissible or unfounded shall be substantiated. No means of recourse is available against such a decision. The secretary of the supervisory board shall immediately send the complainant and the patent agent in question a copy of the supervisory board's decision by registered letter.

6. If the supervisory board is of the opinion that the objection is well founded, the matter will be handled further.

#### **Article 23r**

1. If an objection relates to a member or deputy member of the supervisory board, the supervisory board shall suspend that member or deputy member in respect of his right to serve on the supervisory board during the period in which the objection is being handled.

2. Articles 512 to 519 of the Dutch Code of Criminal Procedure (*Wetboek van Strafvordering*) shall apply *mutatis mutandis* in respect of the challenge and recusal of a member or a deputy member of the supervisory board.

#### **Article 23s**

1. The supervisory board shall not render a decision until after the patent agent and the complainant or the chairman of the Association's management board have been heard or properly called to appear. The call to appear shall be issued by registered letter a maximum of eight weeks after the complaint has been brought to the supervisory board's attention on the ground of Article 23p(4) or after the supervisory board has further handled the complaint on the ground of Article 23q(6), and at least two weeks before the hearing.

2. The patent agent and the complainant or the chairman of the Association's management board shall be entitled to be represented by counsel. The secretary of the supervisory board shall give them an opportunity, in a timely manner, to take cognisance of the documents that relate to the case. They may request copies of or excerpts from those documents at cost.

3. The supervisory board may refuse to allow a person who is not a lawyer or *procureur* to act as counsel, in which case the supervisory board shall defer the case to a subsequent hearing.

4. The supervisory board shall handle an objection against a patent agent at a public hearing. The supervisory board may order that the hearing be held behind closed doors in whole or in part if there are weighty reasons to do so.

#### **Article 23t**

1. The supervisory board may hear witnesses and experts. They shall be called to appear for that purpose by registered letter and are obliged to comply with such a call to appear.

2. If a witness or expert fails to obey the call to appear, the public prosecutor shall summon him at the request of the supervisory board. If a witness or expert fails to obey the summons, at the request of the supervisory board the public prosecutor shall summon him again, if so requested pursuant to a warrant to secure their presence. Article 556 of the Dutch Code of Criminal Procedure shall apply *mutatis mutandis*.

3. The chairman of the supervisory board may hear a witness under oath.

4. The witness is obliged to respond to the questions posed. The witness is obliged to perform his duties impartially and to the best of his ability. Articles 217 to 219 of the Dutch Code of Criminal Procedure shall apply *mutatis mutandis* with respect to the witnesses and experts.

5. Upon request the witnesses and experts shall receive indemnification upon the presentation of the notice calling them to appear, in accordance with the provisions under and by virtue of Article 57 of the Dutch Civil Cases (Fees) Act (*Wet tarieven in burgerlijke zaken*).

#### **Article 23u**

1. The supervisory board can impose one of the following measures on the patent agent if it is of the opinion that the objection lodged against the patent agent is well founded:

a. a warning;

b. a reprimand;

c. suspension from the right to represent the Association for a maximum term of five

years; or

d. divestment of the right to represent the Association.

2. Suspension within the meaning of paragraph 1(c) shall also lead to suspension as a member of the Association and loss of the positions in respect of which the capacity of patent agent is required in order to be eligible or appointed.

#### **Article 23v**

1. The supervisory board's decision shall be substantiated and pronounced in public. The supervisory board shall render its decision within six weeks after the investigation at the public hearing has been closed.

2. The warning or reprimand referred to in Article 23u(1)(a) and (b) shall be pronounced by the chairman of the supervisory board at a meeting of the supervisory board to which the patent agent shall be called by registered letter. An official report of that meeting shall be drawn up. The secretary of the supervisory board shall send a copy of the official report to the patent agent by registered letter.

3. If a measure is imposed within the meaning of Article 23u, the supervisory board may decide to publish a notice in that respect in the journal referred to in Article 20 as soon as the decision has become irrevocable. Such a notice shall be published in any event if a measure within the meaning of Article 23u(1)(c) or (d) is imposed.

4. The secretary of the board shall immediately send a copy of the supervisory board's decision to the patent agent and, if appropriate, the complainant or the chairman of the Association's management board by registered letter and, if a measure has been imposed in the decision, to the Office. The copy of the decision shall indicate the available means of redress.

5. If the measures referred to in Article 23u(1)(c) and (d) are imposed, after the decision has become irrevocable the supervisory board shall notify the patent agent in question, by registered letter, of the date on which the measure will enter into effect.

**Article 23w**

1. An interested party may lodge an appeal before the Court of Appeal of The Hague within 30 days after the date on which the letter referred to in Article 23v(4) is sent, in respect of a decision rendered by the supervisory board within the meaning of Article 23u.

2. The appeal shall be lodged by means of a notice of appeal. The registrar of the Court of Appeal shall immediately notify the supervisory board, the Office, and the complainant and the patent agent insofar as he did not lodge the appeal.

3. The Court of Appeal shall handle the case anew to its fullest extent.

4. Articles 23s and 23t shall apply *mutatis mutandis* in respect of the appeal.

5. Unless the Court of Appeal rules that the appeal is inadmissible or that there are no grounds on which to impose any measure, it shall impose a measure within the meaning of Article 23u.

6. Article 23v shall apply *mutatis mutandis* in respect of the Court of Appeal's decision, on the understanding that 'supervisory board' shall be taken to mean 'the Court of Appeal', 'the chairman of the supervisory board' shall be taken to mean 'the vice president of the Court of Appeal' and 'the secretary of the supervisory board' shall be taken to mean 'the registrar of the court of appeal'.

7. No appeal is possible against decisions rendered by the Court of Appeal.

**Article 23x**

1. The party against whom a decision has been rendered by the supervisory board within the meaning of Article 23u and a party against whom a decision has been rendered by the Court of Appeal within the meaning of Article 23w(5) may request that the decision be revised if there is a strong suspicion that, on the ground of any circumstance that was not apparent at the time at which the decision was rendered, another decision would have been rendered if that circumstance had been known.

2. A party against whom a decision to impose a measure within the meaning of Article 23u(1)(d) has been rendered may request that the decision be amended five years after the decision has become irrevocable.

3. The Court of Appeal of The Hague shall have jurisdiction with respect to the revision referred to in paragraph (1) and the amendment referred to in paragraph (2). Those proceedings shall not lead to a weightier measure being imposed. Articles 23s, 23t, and 23w(2) to (7) shall apply *mutatis mutandis* in respect of the revision and the amendment.

### **Article 23y**

1. An interested party may lodge an objection with the board of examiners in respect of a decision within the meaning of Article 23c(5), in respect of a decision not to allow him or her to take the examination or the proficiency test and against the assessment of the examination or the proficiency test.

2. An interested party may lodge an objection with the supervisory board in respect of an appointment of a patent agent as a trainee's counsellor within the meaning of Article 23h(3).

3. Chapters 6 and 7 of the Dutch General Administrative Law Act (*Algemene wet bestuursrecht*) shall apply *mutatis mutandis* in respect of the objection referred to in paragraph (1) or (2).

4. The curator may request the supervisory board to lift the suspension referred to in Article 23m(1). Articles 23s, 23t and 23v(1) shall apply *mutatis mutandis* in respect of the request to have the suspension lifted. If the supervisory board lifts the suspension, the secretary shall immediately send a copy of the supervisory board's decision to the curator, the interested parties and the Office.

5. An interested party may lodge an appeal before the Court of Appeal of The Hague against a decision in respect of an objection within the meaning of paragraph (1) or (2) or against a decision in respect of a request within the meaning of paragraph (4).

6. Articles 23s, 23t, 23v(1) and 23w, with the exception of



paragraph (5), shall apply *mutatis mutandis* in respect of the appeal.

#### **Article 23z**

Our Minister shall send the States General a report with respect to the effectiveness and efficiency of the Association's functioning within five years after §1a of Chapter 2 of this Act has entered into effect and subsequently every four years.

#### **§2 Grant**

#### **Article 24**

1. An application for a patent must be filed with the Office in writing and must:

- a. contain the name and address of the applicant;
- b. contain the name and place of residence of the inventor unless, as appears from a written declaration attached to the application, the inventor does not wish to be recorded as the inventor of the patent;
- c. contain a request that a patent be granted;
- d. contain a concise indication of the subject matter of the invention;
- e. be accompanied by a description of the invention containing, in one or more claims at the end, a description of the subject matter for which an exclusive right is being sought; and
- f. be accompanied by an abstract of the description.

2. The abstract is intended only to serve as a source of technical information; it specifically may not serve as a means for interpreting the scope of the protection requested or for the application of Article 4(3) or Article 75(2).

3. The application and the other documents shall be in Dutch or in English, with the exception of the claims, which must be in Dutch.

4. The application, the description of the invention, the drawings and the abstract must also be in accordance with the other formal regulations laid down by ministerial order.

5. Proof confirming that an amount has been paid to the Office in accordance with the rate set under or by virtue of a general order in council for the Kingdom must be submitted with the application.

## **Article 25**

1. The description of the invention must be clear and complete and worded such that an expert can understand the invention and use it on the basis of that description. The specifications provided in one or more claims at the end of the definition must be precise. The description should be accompanied by corresponding drawings if necessary.

2. If an invention relates to biological material that is not accessible to the public and cannot be explained in the definition such that an expert could use the invention on that basis, or if an invention implies the use of such biological material, the description will be deemed to be sufficient only if the biological material has been filed with an institution that has been designated for that purpose under or by virtue of a general order in council for the Kingdom no later than the date on which the application is filed.

3. If an invention relates to a sequence or partial sequence of a gene, the description shall contain a concrete description of the function and the industrial application of that sequence or partial sequence. In the event that a sequence or a partial sequence of a gene is used for the production of a protein or partial protein, the description of the industrial applicability shall contain a specification of the protein or partial protein that has been produced and its function.

4. Further regulations may be stipulated by general order in council for the Kingdom with respect to:

- a. the information to be included in the application with respect to the characteristics and the identification of the biological material to be filed; and
- b. the accessibility and availability of the biological material to be filed.

## **Article 26 [Deleted as from 20 November 1998]**

## **Article 27**

Each application for a patent shall relate to one invention only or to a group of related inventions that are so closely connected that they constitute a single general inventive concept. Further

regulations may be laid down in this respect by general order in council for the Kingdom.

#### **Article 28**

1. The applicant may divide a previously filed application by filing a separate application for a part of the content. Such an application shall be deemed to have been filed on the date of filing of the original application, except for the purposes of Article 30(1), Article 31(3) and Article 32(2).

2. The applicant may amend the description, claims and drawings contained in the application that he has already filed.

3. The subject matter of the divisional or amended application must be covered by the content of the original application.

4. The division or amendment may be made up to the time at which the patent application must be entered in the patent register in accordance with Article 31(1) or (2), on the understanding that a term of at least two months after the notification referred to in Article 34(4) has been sent applies in respect of the division or amendment. At the applicant's request the Office may extend the latter term up to four months after the notification referred to in Article 34(4) has been sent.

#### **Article 29**

1. The date of filing shall be deemed to be the date on which the following are submitted:

- a. a request that a patent be granted;
- b. particulars identifying the applicant; and
- c. a description of the invention and one or more claims, even if they fail to comply with the provisions stipulated under or by virtue of Article 24.

2. The Office shall record the date referred to in paragraph (1) and assign a number to the application and shall notify the applicant in that respect as quickly as possible.

3. If the Office is of the opinion that the documents filed do not meet the requirements contained in paragraph (1), the Office shall refuse to record the date referred to in paragraph (1). It shall

notify the applicant of its decision as quickly as possible.

#### **Article 30**

1. If the provisions stipulated under and by virtue of Article 24 have not been complied with, the Office shall notify the applicant in that respect in writing within one month of the date of filing referred to in Article 29(1) or, in the case of a divisional application, within one month of the date on which the divisional application was filed, together with an indication of the provisions that have not been complied with.

2. If the defects are not remedied within three months after dispatch of the notice referred to in paragraph (1), or if the applicant gives notice before that time that he does not wish to remedy them, the Office shall decide not to process the application. The Office shall inform the applicant of its decision as quickly as possible.

#### **Article 31**

1. The Office shall enter a patent application in the patent register as soon as possible after the expiration of 18 months:

- a. following the date of filing referred to in Article 29(1); or,
- b. if it concerns an application for which one or more rights of priority have been claimed, after the first date of priority.

2. At the written request of the applicant registration shall take place at an earlier date.

3. A divisional application as referred to in Article 28 shall be registered as soon as possible after its filing, but in any event not prior to the registration of the original application.

#### **Article 32**

1. Within 13 months of:

- a. the date of filing referred to in Article 29(1); or
  - b. if the application relates to one or more rights of priority that have been claimed, the first date of priority,
- the applicant shall request the Office to perform a search of the state of the art with respect to the subject matter of the patent application prior to the grant of the patent.

A fee in accordance with the rate stipulated under or by virtue of a

general order in council for the Kingdom shall be paid together with the request submitted to the Office. The request shall not be handled until the Office has received that amount.

2. If a divisional application as provided for in Article 28 is involved, the request referred to in paragraph (1) shall be made within 13 months of the date of filing referred to in paragraph (1) or priority of the original application or within two months after the filing of the divisional application if that date is later.

3. If the applicant has not requested the search referred to in paragraph (1) or if the Office has not received the amount referred to in paragraph (1) in a timely manner, the Office shall decide not to process the application. The Office shall inform the applicant of its decision as quickly as possible.

**Article 33 [Deleted as from 5 June 2008]**

**Article 34**

1. A search of the state of the art as provided for in Article 32(1) shall be conducted by the Office, if necessary with the assistance of the European Patent Office referred to in the European Patent Convention.

2. If the applicant so requests, the Office shall subject the application to an international search as provided for in Article 15(5)(a) of the Patent Cooperation Treaty. Such a search shall be deemed to be a search of the state of the art as referred to in Article 32(1).

3. If it appears from the search that the application filed is not in compliance with the provisions stipulated under or by virtue of Article 27, it shall be carried out with respect to the elements of the application relating to the invention or group of inventions referred to in Article 27 that is mentioned first in the claims.

4. The Office shall notify the applicant in writing of the results of the search of the state of the art.

5. If the provisions contained in paragraph (3) apply, the Office shall indicate that that is the case in the notification provided

for in paragraph (4), specifying the invention or group of inventions with respect to which the search was conducted.

#### **Article 35**

1. If the Office is of the opinion that the search of the state of the art cannot be conducted owing to the application's lack of clarity, it shall so inform the applicant as quickly as possible in a substantiated, written notification.

2. If the defects are not remedied within two months of the dispatch of the notification referred to in paragraph (1), or if the applicant gives notice before that time that he does not wish to remedy them, the Office shall decide not to process the application. The Office shall inform the applicant of its decision as quickly as possible.

#### **Article 36**

1. The Office shall grant the patent as soon as the patent application has been entered in the patent register but not earlier than two months or, if the second sentence of Article 28(4) applies, four months after the dispatch of the notification referred to in Article 34(4). It shall record this in the patent register. At the applicant's request the Office shall grant the patent on an earlier date after the result of the search of the state of the art referred to in Article 34(4) has been dispatched.

2. The patent shall be granted by recording a dated note on the application in the form in which it has been filed or amended in accordance with Articles 28 or 30(2).

3. The Office shall publish the description and drawings that form part of the application by means of a patent specification and shall provide the applicant with a certified copy of that patent specification.

4. If Article 34(3) applies, the patent shall relate only to the invention or group of inventions referred to in Article 27 that is mentioned first in the claims.

5. The report on the search of the state of the art shall be attached to the patent specification.

6. A patent granted by virtue of this Article shall remain in force, barring earlier lapse, waiver or invalidation by the court, until the expiry of a term of 20 years from the date of filing provided for in Article 29(1).

**Article 37 [Deleted as from 5 June 2008]**

**Article 38**

1. Any party may inform the Office in writing regarding a patent application or the patent granted on it. The Office shall pass that information on to the applicant or the patent holder insofar as the information was not provided by the applicant or the patent holder himself.

2. If the identification of the inventor referred to in Article 24(1)(b) is incorrect or if a person other than the inventor declares that the inventor does not wish to be identified as such in the patent, the applicant and inventor may jointly request the Office in writing to make the necessary corrections to the patent in exchange for payment of an amount to be set by general order in council for the Kingdom. If applicable, the request must be accompanied by the written consent of the person wrongly designated as the inventor.

**Article 39**

1. The withdrawal of a patent application entered in the patent register shall have no consequences for third parties as long as no final and irrevocable decision has been rendered in respect of legal claims that have been brought with regard to the application as appears from documents entered in the patent register.

2. In the event that a person other than the applicant is entitled to the patent or has a joint right to the patent by virtue of a final and irrevocable decision in legal proceedings as referred to in paragraph (1), the withdrawal shall be deemed not to have occurred.

3. The Office shall record the withdrawal in the patent register.

### **§3 Maintenance of Confidentiality of the Content of Patent Applications**

#### **Article 40**

1. If the Office is of the opinion that the confidentiality of the content of a patent application may be in the interest of the defence of the Kingdom or its allies, it shall notify the applicant in that respect as quickly as possible, but in any event within three months after the date on which the application was filed. Our Minister of Defence may give instructions to the Office regarding whether such an interest may be involved.

2. At the same time as the notification referred to in paragraph (1) is sent, the Office shall send a copy of the decision and the description and drawings pertaining to the application to Our aforementioned Minister.

3. In the event that paragraph (1) applies, the entry of the application in the patent register shall be suspended.

#### **Article 41**

1. Within eight months of the filing of a patent application as referred to in Article 40, Our Minister of Defence shall decide whether the content of the application must be kept confidential in the interest of the defence of the Kingdom or its allies. He shall notify the Office of his decision.

2. A decision that the content of the application must be kept confidential shall have the effect of suspending the entry of the application in the patent register for a period of three years from the date of notification of the decision.

3. The suspension shall end if:

- a. Our aforementioned Minister decides that the application need not be kept confidential; or
- b. no decision has been made within the term referred to in paragraph (1).

4. Our aforementioned Minister may extend the term of suspension within six months preceding its expiry for periods of three years at a time. He shall notify the Office of his decision.



5. Our aforementioned Minister may decide that the content of the application need no longer be kept secret. Such a decision shall terminate the suspension.

6. The Office shall inform the applicant without delay of any decision in accordance with paragraph (1), (3), (4) or (5). The Office shall also inform the applicant without delay if no decision has been rendered as referred to in paragraph (3) or (5).

7. For as long as the suspension has not been terminated the Office shall send the aforementioned Minister, at his request, copies of all the relevant documents exchanged between the Office and the applicant.

8. If the suspension is terminated, the application nonetheless shall not be entered in the patent register until a period of three months has elapsed, unless the applicant requests otherwise.

#### **Article 42**

1. Any party whose patent application has become subject to Articles 40, 41 or 46 shall, at his request, be awarded compensation by the State for any damage that he has sustained as a result of the enforcement of those Articles.

2. The amount of the compensation shall be determined after the termination of the suspension. If, however, the term of suspension has been extended by virtue of Article 41(4), at the applicant's request the amount of the compensation shall be determined in instalments, the first relating to the period prior to the commencement of the first extension, the next to the period between two successive extensions and the last to the period from the commencement of the last extension to the termination of the suspension; the amounts shall be determined upon the expiration of the relevant periods.

3. The amount of the compensation shall be determined, if possible, by Our Minister of Defence and the applicant in consultation. If no agreement has been reached within six months from the date of the expiry of the period to which the compensation relates, the first sentence of Article 58(6) shall apply *mutatis mutandis*.

#### **Article 43**

1. If an applicant requests that the content of a patent application be kept secret in the interest of the defence of another State, or if the government of that State makes such a request, provided the applicant has stated in writing that he renounces any compensation for damage he might sustain by reason of the enforcement of this Article, the Office shall immediately send a copy of that request and of the specification and drawings pertaining to the application as well as the aforementioned waiver to Our Minister of Defence. In such a case, the entry of the application in the patent register shall be suspended. In the absence of a waiver, the Office shall notify Our aforementioned Minister in that respect without delay.

2. Within three months following the date of filing of the request, Our aforementioned Minister may decide that the content of the application must be kept secret in the interest of the defence of the State concerned, provided that he has ascertained that a duty of confidentiality has also been imposed on the applicant by that State and that the applicant has been given permission by that State to file an application subject to a duty of confidentiality. The applicant and the Office shall be notified of the decision.

3. A decision within the meaning of paragraph (2) shall result in the entry of the application in the patent register being suspended until Our aforementioned Minister decides that the content of the application need no longer be kept secret. The suspension shall end if a decision has not been rendered within the term referred to in paragraph (2).

4. Article 41(7) and (8) shall apply *mutatis mutandis* with regard to an application as referred to in paragraph (1).

#### **Article 44**

1. In the event that Our Minister of Defence is of the opinion that it is in the interest of the defence of the Kingdom for the State to use, put into practice or cause to be used or to be put into practice the subject matter of a patent application to which Article 40, 41 or 43 has been applied, he may take measures to that effect after giving notice of the decision in question. That decision shall contain a precise description of the acts that the State must be able to perform or cause to be performed.

2. The State shall pay the applicant compensation for the use or the putting into practice of the subject matter of the application pursuant to paragraph (1).

3. The amount of that compensation shall be determined, if possible, by Our aforementioned Minister and the applicant in consultation. If no agreement has been reached within six months following the date of the notification referred to in paragraph (1), the first sentence of Article 58(6) shall apply *mutatis mutandis*.

#### **Article 45**

If the State itself is the holder of a patent application and if Our Minister of Defence notifies the Office that its content must be kept secret in the interest of the defence of the Kingdom or its allies, the entry of the application in the patent register shall be suspended until Our aforementioned Minister notifies the Office that the content of the application need no longer be kept secret.

#### **Article 46**

1. A European patent application whose applicant knows or reasonably should know that the content thereof should be kept confidential in the interest of the defence of the Kingdom or its allies shall be filed with the Office.

2. The Office shall immediately send a copy of the description and drawings pertaining to the application to Our Minister of Defence.

3. Not later than three weeks before a European patent application must be sent to the European Patent Office, Our aforementioned Minister shall notify the Office whether the content of the application must be kept confidential in the interest of the defence of the Kingdom or its allies.

4. If notification in accordance with paragraph (3) has been effected in the negative or if no notification has been given, the Office shall forward the European patent application to the European Patent Office referred to in the European Patent Convention with due observance of the term stipulated in that Convention.

5. The Office shall inform the applicant without delay of any notification by virtue of paragraph (3) or of the absence thereof.

## **§4 Conversion of European Patent Applications**

### **Article 47**

A European patent application that is in compliance with the provisions contained in Article 80 of the European Patent Convention and is deemed to have been withdrawn on the ground of Article 77(3) of that Convention and that has been received by the Office as an annex to a regular request for conversion to a patent application in the Kingdom, hereinafter to be referred to as a 'converted application', shall be deemed to be a patent application as referred to in Article 24 that has been addressed to the Office and filed with the Office. A request for conversion shall be deemed to be regular if it has been made and forwarded to the Office in a timely manner with due observance of the provisions contained in Part VIII, Chapter I, of the European Patent Convention.

### **Article 48**

1. The converted application shall indicate the date on which it was received by the Office, together with a serial number. The Office shall inform the applicant as quickly as possible in this respect.

2. Proof of payment in respect of the converted application as specified in Article 24(5) shall be furnished within a period of three months from the date of filing referred to in paragraph (1). If the European patent application has not been filed in Dutch, a translation into Dutch of the original documents relating to that application shall be filed within the same period. The translation shall form part of the converted application; it shall be certified at the request of the Office within a term to be stipulated by the Office. If the provisions contained in this paragraph have not been complied with in a timely manner, the Office shall give the applicant one opportunity to remedy that defect within a term to be stipulated by the Office. If the applicant does not remedy the defect in a timely manner, the Office shall decide not to process the application. The Office shall notify the applicant of its decision as quickly as possible.

3. The formal requirements stipulated under or by virtue of Article 24 shall not apply in respect of the converted application if and to the extent that they differ from or are supplementary to the provisions stipulated under or by virtue of the European Patent

Convention; in such cases the latter provisions shall apply in respect of the converted application.

4. As soon as the applicant has complied with the provisions contained in paragraph (2), the Office shall determine whether the application is in compliance with the provisions stipulated under or by virtue of Article 24 or, if applicable, the provisions contained in the European Patent Convention as referred to in paragraph (3). If that is not the case, or if making the invention public would be contrary to the public order or public morality, the Office shall so notify the applicant in writing as quickly as possible, stating the requirements that have not been complied with. Article 30(2) shall apply *mutatis mutandis*.

5. For the application of Articles 31(1), 36(6) and 61(1) in respect of the converted patent application, 'the date of filing referred to in Article 29(1)' shall be taken to mean 'the date on which the application has been filed in accordance with Article 80 of the European Patent Convention with due observance of Article 61 or 76 of that Convention'. Notwithstanding the provisions contained in Article 32(1) and (2), a request to perform a search of the state of the art prior to the grant of the patent with respect to the subject matter of the converted patent application or an application that has been divided from it may be submitted within two months after the date indicated in the converted application in accordance with Article 48(1) or within two months after the divisional application has been submitted.

6. The entry in the patent register referred to in Article 31 shall not take place until it has been ascertained that the requirements contained in paragraph (4) have been satisfied or the deficiencies have been remedied.

## **Chapter 3 Provisions Governing European Patents**

### **Article 49**

1. With due observance of the provisions contained in this Kingdom Act, European patents shall have the same legal consequences and shall be governed by the same legal provisions as patents granted under Article 36 of this Kingdom Act, as from the date on which the notification of the grant is published in accordance with Article 97(3) of the European Patent Convention.

2. Barring earlier lapse or invalidation by the court, a European patent shall remain in force for a period of 20 years from the date of filing of the European patent application that led to the European patent concerned pursuant to Article 80 of the European Patent Convention, in accordance with Articles 61 or 76 of that Convention.

3. For the application of the provisions contained in Articles 55(1), 57(4) and 77(1) in respect of European patents, the date of filing shall be deemed to be the date of filing of the European patent application that resulted in the grant of the European patent in accordance with Article 80 of the European Patent Convention, with due observance of Article 61 or 76 of that Convention.

### **Article 50**

1. A European patent shall be deemed not to have had the legal consequences referred to in Articles 53, 53a, 72 and 73 from the outset, in whole or in part, insofar as the patent is revoked or limited in whole or in part.

2. The retroactive force of the revocation shall not affect:

a. a decision, other than injunctive relief, relating to acts that conflict with the exclusive rights of the patent holder referred to in Articles 53 and 53a or acts as referred to in Articles 72 and 73 that has become final and has acquired the force of *res judicata* and had been enforced before the revocation; or

b. an agreement concluded prior to the revocation, insofar as it was implemented prior to the revocation; however, in the interest of equity repayment may be demanded in respect of payments made on the basis of such an agreement, to the extent justified by the circumstances.

3. For the application of paragraph (2)(b), the conclusion of an agreement shall be deemed to include the creation of a licence in another manner provided for in Articles 56(2), 59 or 60.

#### **Article 51**

1. The Office shall immediately enter in the patent register the publication, pursuant to Article 97(3) of the European Patent Convention, of the notification that a European patent has been granted.

2. The Office shall immediately enter in the patent register any notice of opposition proceedings, limitation proceedings or revocation proceedings in respect of a European patent, indicating the date on which that occurred and the decisions of the European Patent Office with respect to such proceedings.

#### **Article 52**

1. Within a term to be set by general order in council for the Kingdom, any party to whom a European patent has been granted in a language other than English shall provide the Office with a translation into Dutch or English of the text in which the European Patent Office has decided to grant the patent. In addition, within a term to be set by general order in council for the Kingdom, the party to whom a European patent has been granted shall provide the Office with a translation into Dutch of the claims in respect of the patent that has been granted. When the translation is submitted a fee shall be due, the amount of which and the term within which it is to be paid shall be set by general order in council for the Kingdom.

2. The translations referred to in paragraph (1) must be in compliance with the formal requirements stipulated by ministerial regulation. If upon receipt within the term referred to in paragraph (1) a formal requirement has not been satisfied, the Office shall so notify the patent holder without delay, stating the requirement that has not been satisfied and the term within which the defects that have been found may be remedied.

3. The Office shall make note in the patent register, in the proper form, of the translations referred to in paragraph (1) immediately upon receiving them.

4. The European patent shall be deemed not to have had the legal consequences referred to in Article 49 from the outset if:

- a. the translations referred to in paragraph (1) have not been received by the Office or the amount due by virtue of that paragraph has not been paid within the term referred to in paragraph (1); or
- b. the stipulated requirements have not been satisfied within the term referred to in paragraph (2).

5. In the event that a circumstance arises as referred to in paragraph (4), the Office shall immediately record that fact in the patent register.

6. Paragraphs (1) to (5) shall apply *mutatis mutandis* if the European patent has been amended during opposition proceedings or limitation proceedings.

7. The patent holder may provide the Office with a corrected translation at any time, for which a fee shall be due in an amount to be set by general order in council for the Kingdom. The second sentence of paragraph (1) and paragraphs (2) and (3) shall apply.

8. As from the time at which the entry referred to in Article 51(1) is made in the patent register, all documents pertaining to the European patent that the Office receives or sends to the holder of the European patent or to third parties within the context of the provisions contained in this Kingdom Act shall be open to public inspection free of charge. The Office shall publish a notification regarding all those documents in the journal referred to in Article 20 as quickly as possible, but in any event not before the time referred to in the first sentence.

9. If in the translation referred to in paragraph (1) or (7) the scope of the protection of the European patent application or the European patent is more limited than the protection that is offered by that application or by that patent in the language of the case, that translation will be deemed to be the authentic text unless Article 75 applies.

10. If a holder of a European patent notifies an alleged infringing party in writing regarding the infringement of his patent, at the request of an alleged infringing party the patent holder shall have



the text of the patent translated into Dutch and shall provide that text to the applicant.

11. The costs related to the translations will be paid by the patent holder.

## **Chapter 4 Legal Effects of the Patent**

### **§1 Rights and Obligations of the Patent Holder**

#### **Article 53**

1. Subject to the provisions contained in Articles 54 to 60, a patent shall confer on its owner the exclusive right:
  - a. to make, use, put on the market or resell, hire out or deliver the patented product, or otherwise deal in it in or for his business, or to offer, import or stock it for any of those purposes;
  - b. to use the patented process in or for his business or to use, put on the market, or resell, hire out or deliver the product obtained directly as a result of the use of the patented process, or otherwise deal in it in or for his business, or to offer, import or stock it for any of those purposes.
2. The exclusive right shall be determined by the content of the claims contained in the patent specification, in which context the description and the drawings shall serve for the interpretation of those claims.
3. The exclusive right shall not extend to acts solely serving for research on the patented subject matter, including the product obtained directly as a result of using the patented process.
4. The performance of necessary studies, tests and experiments in connection with the application of Article 10(1) to (4) of Directive 2001/83/EC on the Community Code relating to medicinal products for human use (Official EC Journal L 311) or Article 13(1) to (5) of Directive 2001/82/EC on the Community Code relating to veterinary medicinal products (Official EC Journal L 311) and the ensuing practical requirements shall not be deemed to constitute an infringement of patents relating to medicinal products for human use or medicinal products for veterinary use, respectively.
5. If a product as referred to in paragraph (1)(a) or (b) has been put on the market lawfully in the Netherlands or the Netherlands Antilles or in one of the Member States of the European Union or in another State that is party to the Agreement concerning the European Economic Area by the patent holder or with his consent, the person who obtains or later holds the product shall not be deemed to have

contravened the patent by using, selling, hiring out or delivering that product or by otherwise dealing in it in or for his business, or by offering, importing, or stocking the product for any of those purposes.

6. A product within the meaning of paragraph (1)(a) or (b) that was manufactured in a business prior to the grant of a patent or, if a European patent is concerned, prior to the date of publication of the notification that the European patent has been granted in accordance with Article 97(3) of the European Patent Convention, may continue to be used on behalf of that business notwithstanding the patent.

#### **Article 53a**

1. With respect to a patent for biological material that has acquired certain characteristics as a result of the invention, the exclusive right shall include any biological material that is produced from such material by means of propagation or multiplication in the same or in a differentiated form and that has the same characteristics.

2. With respect to a patent for a process intended to produce biological material that has acquired certain characteristics as a result of the invention, the exclusive right shall include biological material that has been produced directly by that process and any other biological material that is produced from such material by means of propagation or multiplication in the same or in a differentiated form and that has the same characteristics.

3. With respect to a patent for a product that consists of or that contains genetic information, the exclusive right shall include any material in which that product is incorporated and in which the genetic information is included and performs its function, without prejudice to the provisions contained in Article 3(1)(b).

#### **Article 53b**

The exclusive right shall not include biological material that is obtained by propagation or by multiplication of biological material that has been put on the market lawfully in the Netherlands or the Netherlands Antilles or in one of the Member States of the European Union or in another State that is party to the Agreement concerning

the European Economic Area by the patent holder or with his consent if the propagation or multiplication necessarily ensues from the use for which the biological material has been put on the market, provided that the derived material is not subsequently used for other propagations or multiplications.

#### **Article 53c**

1. Notwithstanding the provisions contained in Articles 53 and 53a, the sale of vegetable propagation material or another form of putting vegetable propagation material on the market by the patent holder or with his consent to a farmer for the purposes of agricultural exploitation implies a right for the latter party to use the products of his harvest for further propagation or multiplication by himself in his own company, with due observance of the provisions stipulated under or by virtue of Regulation (EC) no. 2100/94 of the Council of the European Union of 27 June 1994 on Community plant variety rights (Official EC Journal L 227).

2. Notwithstanding the provisions contained in Articles 53 and 53a, the sale of breeding cattle or another form of putting breeding cattle on the market by the patent holder or with his consent to a farmer implies for the latter party the right to use the cattle that is protected by a patent for agricultural purposes.

3. Use for agricultural purposes within the meaning of paragraph (2) is in any event taken to include making the animal or animal propagation material available for use in a farmer's agricultural company, but not selling within the context of or with a view to commercial cattle breeding.

4. Our Minister or Our Minister of Agriculture, Nature and Food Quality may stipulate further regulations by general order in council for the Kingdom with respect to the right referred to in paragraph (2) or (3).

#### **Article 54**

The exclusive right of the patent owner shall not include:

a. the use on board vessels of other countries of the subject matter of the patent in the body of the vessel or in the machinery, rigging, tackle and other accessories thereof when such vessels are in the waters of the Netherlands or Netherlands Antilles temporarily or

accidentally, provided that the use is for the actual needs of the vessel only;

b. the use of the subject matter of the patent in the construction or operation of aircraft or land vehicles or of the accessories of such aircraft or land vehicles belonging to other countries, when such aircraft or land vehicles are in the Netherlands or Netherlands Antilles temporarily or accidentally; or

c. the acts specified in Article 27 of the Chicago Convention on International Civil Aviation of 7 December 1944 (Dutch Bulletin of Acts and Decrees, 1947, H 165), provided that those acts relate to aircraft of a State other than the Kingdom or Aruba as mentioned under (c) in that Article.

#### **Article 55**

1. Any party who, in the Netherlands or Netherlands Antilles, has already manufactured or applied or commenced implementation of his intention to manufacture or apply, in or for his business, the subject matter of a patent application filed by another party on the filing date thereof or, if the applicant has a right of priority under Article 9(1) or Article 87 of the European Patent Convention, on the filing date of the priority application, shall, notwithstanding the patent, continue to have the right to perform the acts referred to in Article 53(1), that right being based on prior use, unless his knowledge was obtained from matter already made or applied by the applicant or from the applicant's descriptions, drawings or models.

2. Paragraph (1) shall apply *mutatis mutandis* with respect to that part of the continental shelf contiguous to the Netherlands or Netherlands Antilles in which the Kingdom has sovereign rights, but exclusively to the extent that such acts are associated with and performed during the exploration for or recovery of natural resources.

3. A party who, in good faith, has already manufactured or applied or commenced implementation of his intention to manufacture or apply, in or for his business, the subject matter in respect of which a European patent has been granted to another party before the date on which a notification of a corrected translation within the meaning of Article 52(7) has been entered in the patent register shall, notwithstanding the patent, continue to have the right to perform

the acts referred to in Article 53(1) insofar as such acts do not infringe the patent holder's exclusive right, which right in this case will be determined by the content of the claims in the patent specification and the description and drawings intended for the interpretation thereof contained in the earlier, defective translation into Dutch.

4. The right referred to in paragraphs (1) and (3) may be transferred to third parties only with the business.

#### **Article 56**

1. The right to perform acts prohibited to any person other than the patent holder by virtue of Article 53 may be acquired from the patent holder by means of a licence. That right shall extend to all acts referred to in the aforementioned Article and shall remain in force as long as the patent is in effect, unless a less extensive right has been granted under the licence.

2. A licence shall be created by an agreement, by an accepted testamentary disposition or, in accordance with Articles 57 and 58, by a decision rendered by Our Minister or by a court decision that has become final and has acquired the force of *res judicata*. A licence created by an agreement or an accepted testamentary disposition shall have effect towards third parties after the title has been entered in the patent register. A fee shall be due for that entry, to be set by general order in council for the Kingdom.

3. If the right to a fee in respect of a licence passes to another party in accordance with Article 75(8) or Article 78(4), the successor in title shall be entitled to a part of the total fee paid or to be paid for the licence in proportion to the period during which the licence should continue to have effect under normal circumstances. If the amount still to be paid by the licensee is insufficient to provide the successor in title with that which he is due, the latter may seek redress for the shortfall from his predecessor.

#### **Article 57**

1. If Our Minister considers it in the public interest he may grant a licence under a patent to a party that he designates, provided that he precisely indicates the relevant content. Before rendering

his decision, unless it is incompatible with the urgency of the matter Our Minister shall ascertain whether the patent holder is willing to grant the licence voluntarily and on reasonable terms. To this end, he shall give the patent holder an opportunity to express his opinions on the matter in writing and, at his request, also orally. The patent holder and the licensee shall be notified of the decision. In his decision Our Minister may impose upon the licensee the obligation to provide security within a certain term. The lodging of an objection and an appeal shall have a suspensive effect, unless the decision of Our Minister provides otherwise in view of the urgency of the matter.

2. If, after three years have elapsed since the grant of the patent, neither the patent holder nor any other party who has been granted a licence operates an industrial establishment in the Kingdom or in another State to be designated by general order in council for the Kingdom in which the product concerned is being made or where the process concerned is being applied in good faith and on a sufficient scale, the patent holder shall be obliged to grant the licence needed for operating such an establishment unless valid reasons are shown to exist for the absence of such an establishment. This obligation shall apply in respect of the holder of a European patent if, after three years have elapsed since the date on which the notification of the grant of the European patent was published in accordance with Article 97(4) of the European Patent Convention, an industrial establishment as referred to above is not in operation in the Netherlands or in the Netherlands Antilles or in another State to be designated by general order in council for the Kingdom.

3. Paragraph (2) shall not apply if the patent holder or any other party who has been granted a licence has an industrial establishment in operation in that part of the continental shelf contiguous to the Netherlands or Netherlands Antilles in which the Kingdom has sovereign rights, in which those acts referred to in that paragraph are performed in good faith and on a sufficient scale, provided that such acts are associated with and performed during the exploration for or recovery of natural resources.

4. The patent holder is obliged at all times to grant a licence required for the use of a patent granted in respect of an application that has the same or a later date of filing or, if a

right of priority exists in respect of the application, the same or later date of priority, insofar as the patent for which the licence is requested represents a considerable technical advance involving a considerable economic value; however the patent holder will be obliged to grant a licence required for the use of a European patent only after the term for filing an opposition to the European patent has expired or after opposition proceedings thus instituted have ended. The scope of such a licence shall not extend further than is necessary for the use of the licensee's patent. The latter will be obliged to grant a reciprocal licence under his patent to the holder of the other patent.

5. The patent holder shall grant a plant breeder a licence in exchange for a reasonable fee if the plant breeder cannot obtain or exploit a plant breeder's right in respect of the plant variety without infringing the patent that was granted earlier and the licence is necessary for the exploitation of the plant variety to be protected, which represents a significant technical advance involving a considerable economic value in respect of the invention protected by the patent.

6. If a patent holder is granted a licence on the ground of Article 42(2) of the Dutch Seeds and Planting Materials Act (*Zaaizaad- en Plantgoedwet*), the patent holder shall grant the holder of the plant breeder's right a reciprocal licence, at the latter's request, to use the protected invention subject to reasonable conditions.

#### **Article 57a**

Notwithstanding the provisions contained in Article 57, a compulsory patent licence in the field of semiconductor technology may be granted only for non-commercial use by the government or in order to combat an act that has been determined to be restrictive of competition after judicial or administrative proceedings.

#### **Article 58**

1. If the licence referred to in Article 57(2), (4), (5) or (6) is unjustifiably withheld, the licence shall be granted by the court on the basis of a claim brought by the interested party. At the claimant's request the Office shall enter the writ of summons in the patent register.



2. If a patent is granted on the basis of this Kingdom Act, the claimant's claim shall be inadmissible if he does not attach to his writ of summons the results of a report by the Office or the European Patent Office as referred to in the European Patent Convention concerning the state of the art with regard to the subject matter of the patent for which the licence is being claimed.

3. The grant of a licence claimed pursuant to the first sentence of Article 57(4) may be suspended, subject to a term or subject to no term, if a claim to have the patent for which the licence is being claimed invalidated has been submitted within two months after service of the writ of summons in which the licence is claimed.

4. In the description of the licence granted the court may derogate from the licensee's claims and may also require that the licensee furnish security within a certain term. A licence granted pursuant to the first sentence of Article 57(4) may be transferred only together with the licence holder's patent. A licence granted pursuant to the first or third sentence of Article 57(4) shall not expire because the patent on which the licence is granted has lapsed upon the expiry of the period referred to in Article 36(6) or has been successfully claimed, but such a licence shall expire insofar as the patent is invalidated in whole or in part as a result of the claim referred to in paragraph (3).

5. A decision within the meaning of Article 57(1) or a court decision that has become final and has acquired the force of *res judicata* shall be entered in the patent register by the Office. If an obligation to furnish security has been imposed, the entry shall not be made before that obligation has been met. A fee, the amount of which shall be fixed by general order in council for the Kingdom, shall be due for the entry. The licence shall enter into effect only after the entry, but shall subsequently also have effect with regard to parties who became entitled to the patent after the entry in the register of the writ of summons referred to in paragraph (1). However, a registered licence granted on the ground of Article 57(4) shall have retroactive effect to the date on which the writ of summons was entered.

6. On the ground of a claim brought by the initiating party, in the absence of agreement the court shall fix the fee that the licensee

must pay to the patent holder. In that context the court may also require that the licensee furnish security within a certain term or confirm or change the security stipulated by virtue of Article 57(1) or paragraph (5) of this Article.

#### **Article 58a**

1. A licence granted on the ground of Article 57 is not exclusive.
2. A licence granted on the ground of Article 57 may be transferred only together with the part of the business or the goodwill of the part of the business in which the licence is exercised.
3. A licence granted on the ground of Article 57 may be revoked if, taking into consideration a reasonable protection of the licensee's justified interests, the circumstances that led to the licence being granted have ceased to exist and it is unlikely that they will be revived. On the ground of a substantiated request the authority that granted the licence shall investigate whether the aforementioned circumstances continue to apply.

#### **Article 59**

1. In the interest of the defence of the Kingdom, and on a joint recommendation by Our Minister and Our Minister who is directly concerned, it may be provided by Royal Decree that the State shall be authorised to perform or cause others to perform acts, to be described precisely in that Decree, that the patent holder to be specified in that Decree has the exclusive right to perform pursuant to Articles 53 and 53a. The authorisation shall apply as long as the patent is in effect, unless a shorter term has been specified in the Decree.
2. Upon the entry into force of a Decree as referred to in paragraph (1), Our Minister who is directly concerned shall determine, by agreement with the patent holder, the fee to be paid to the patent holder by the State. If Our Minister who is directly concerned has not reached an agreement with the patent holder within six months from the date of the entry into force of that Decree, Article 58(6) shall apply *mutatis mutandis*, with the exception of the provisions concerning the furnishing of security.

## **Article 60**

1. Without prejudice to the first sentence of Article 56(2), a licence may be created by:

a. a decision of the Arbitration Tribunal referred to in Article 20 of the Treaty establishing the European Atomic Energy Community (EURATOM) (Treaty Bulletin 1957, 92); or

b. a decision by Our Minister pursuant to Article 21 of the aforesaid Treaty.

2. The second and third sentences of Article 56(2) shall apply *mutatis mutandis* with respect to a licence obtained by a final decision within the meaning of paragraph (1)(a).

3. Article 58(1) and (4) and the first, second and third sentences of Article 58(5) shall apply *mutatis mutandis* with respect to a decision as referred to in paragraph (1)(b). The fourth sentence of Article 58(5) and Article 58(6) shall apply *mutatis mutandis* with respect to a licence granted by virtue of such a decision.

4. A licence as referred to in paragraph (1) shall not be effective in the Netherlands Antilles.

## **§2 Annual Fee and Waiver**

## **Article 61**

1. In order to maintain the patent, an amount to be specified by general order in council for the Kingdom must be paid to the Office every year, starting in the fourth year after the date of filing referred to in Article 29(1), on the last day of the month in which the application that resulted in the grant of a patent was filed or is deemed to have been filed pursuant to Article 28(1).

2. In order to maintain a European patent, an annual fee as referred to in paragraph (1) must be paid to the Office, starting after the year referred to in Article 86(4) of the European Patent Convention has ended but in any event not earlier than the commencement of the fourth year after the date of filing referred to in Article 80 of the European Patent Convention. That amount must be paid on the last day of the month in which the filing date, pursuant to Article 80 of the European Patent Convention, of the European patent application that resulted in the grant of the patent fell in accordance with

Article 61 or 76 of that Convention. If the fee falls due for the first time within a period of two months from the date of publication of the notification of the grant of the European patent in accordance with Article 97(4) of the European Patent Convention, that amount may be paid on the last day of the month in which that term expires.

3. For payments made after the due date an additional fee shall be due, the amount of which shall be set by general order in council for the Kingdom.

#### **Article 62**

A patent shall expire by operation of law if the amounts referred to in Article 61 are not paid within six calendar months of the due date referred to in that Article. Any such expiry shall be recorded in the patent register of the Office.

#### **Article 63**

1. A patent holder may relinquish his patent in whole or in part. The relinquishment of the patent shall be effective retroactively in accordance with Article 75(5) to (7).

2. The relinquishment shall be effected by registering a deed to that effect in the patent register. The Office shall not register the deed as long as there are persons who, by virtue of documents entered in the patent register, have registered rights in respect of the patent or have received licences or have commenced legal proceedings concerning the patent and such persons have not consented to the surrender.

### **§3 The Patent as a Component of Assets**

#### **Article 64**

1. The patent and the right to obtain a patent shall be assignable or otherwise transferable in full or joint ownership.

2. The Office may enter in the patent register the assignment and other transfer of the patent or of the right ensuing from the patent application. A fee, to be set by general order in council for the Kingdom, shall be due for such an entry.

#### **Article 65**

1. The transfer required for the assignment of the patent or the rights arising from a patent application shall be effected by means of a deed containing a declaration by the patent holder that he assigns the patent or the rights arising from the patent application to the assignee and a declaration by the assignee that he accepts the assignment.

2. Any reservation relating to the assignment must be specified in the deed; in the absence of any such reservation, the assignment shall be deemed to be unrestricted.

3. The assignment shall take effect towards third parties only after an entry has been made concerning the deed in the patent register. Both parties shall be equally entitled to have the entry made in the register.

4. Article 88 of Book 3 of the Dutch Civil Code shall apply.

#### **Article 66**

1. If various persons are jointly entitled to the patent, their mutual relationship shall be governed by an agreement made between them.

2. If no such agreement has been made or if the agreement does not provide otherwise, any person entitled to the patent shall have the right to perform the acts referred to in Article 53 and to take action in accordance with Articles 70 to 73 against any such act, as well as against the acts referred to in Article 73(1) and (2) if they were performed by a party who was not entitled to do so; however, a licence or consent as referred to in Article 73(2) may be granted only with the joint consent of the persons entitled to the patent.

3. The persons entitled to the patent shall be jointly and severally liable with respect to the payment of the fee referred to in Article 61.

#### **Article 67**

1. A pledge on a patent shall be established by a deed and shall be effective against third parties only after the Office has entered it

in the patent register.

2. The pledgee is required to sign a declaration, to be sent to the Office for registration, in which he elects an address for service in The Hague. If he has not elected an address for service in The Hague, the Office shall be deemed to be the elected address for service.

3. Stipulations in the deed of pledge concerning licences to be granted after registration shall take effect, also towards third parties, from their date of their entry in the patent register. Stipulations concerning fees for licences granted prior to registration shall take effect towards the licensee after he has been served with a bailiff's writ.

4. The Office shall enter in the patent register any deeds from which it appears that the right of pledge has ceased to exist or has ceased to have effect.

#### **Article 68**

1. In the event of an attachment in respect of a patent, the writ of attachment shall be entered in the patent register and the provisions contained in the Dutch Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*) governing an attachment under a warrant of execution and a prejudgment attachment of real property shall apply *mutatis mutandis*, subject to the condition that the writ of attachment contains a description of the patent instead of the nature and location of the real property.

2. Alienation, encumbrance, an administrative order in respect of or the granting of a licence taking effect after the writ of attachment has been registered may not be invoked against the attaching creditor.

3. Licence fees that have not been paid prior to the entry of the writ of attachment shall be included in the attachment of the patent after the licensee has been served with notice of the registered attachment. Those fees must be paid to the civil-law notary on whose behalf the writ is served, provided that the licensee has been expressly notified hereof when served with the notice and subject to the rights of third parties, which the judgment creditor must honour.

Any amount paid to the civil-law notary shall fall under the proceeds referred to in Article 69(2). Articles 475i, 476 and 478 of the Dutch Code of Civil Procedure shall apply *mutatis mutandis*.

4. The registration of the writ of attachment may be revoked:
  - a. pursuant to a written declaration, offered for registration by the bailiff, that he is discontinuing the attachment on the instructions of the attaching creditor or that the attachment has expired; or
  - b. pursuant to a court decision, offered for registration, lifting the attachment or establishing or leading to the expiry of the attachment.

5. Articles 504a, 507a, 538 to 540, 726(2) and 727 of the Dutch Code of Civil Procedure shall apply *mutatis mutandis* in respect of the attachment of a patent.

#### **Article 69**

1. The sale of a patent by a pledgee or attaching creditor for the purposes of recovering a claim shall take place in public before an authorised civil-law notary. Articles 508, 509, 513(1), 514(2) and (3), 515 to 519, and 521 to 529 of the Dutch Code of Civil Procedure shall apply *mutatis mutandis*, on the understanding that the relevant provisions contained in those Articles governing mortgages and mortgagees apply in respect of the pledges on the patent and the pledgees.

2. Articles 551 to 552 of the Dutch Code of Civil Procedure shall apply *mutatis mutandis* with respect to the distribution of the proceeds.

#### **§4 Enforcement of the Patent**

##### **Article 70**

1. The patent holder may enforce his patent towards any party who performs any of the acts referred to in Article 53(1) without being entitled to do so.

2. The claim of the patent holder in respect of a patent that has been granted on the basis of this Kingdom Act shall be inadmissible if he does not submit the search report on the state of the art with

regard to the subject matter of the patent as drawn up by the Office or by the European Patent Office referred to in the European Patent Convention as an appendix to the writ of summons or the statement of counterclaim and, in the event of summary proceedings, at the hearing.

3. The court may request the patent holder to submit a translation of the patent in Dutch and may set a term within which that translation must be submitted. The claim of a patent holder shall be inadmissible if he has not submitted the translation within that term.

4. Damages may be claimed only from a party who performs acts that he knows or reasonably should know constitute an infringement.

5. In addition to damages, the patent holder may seek to have the defendant ordered to surrender any profits derived from the infringement and to render an account of such profits; however, if the court determines that the circumstances of the case do not justify such an order, it may order the defendant to pay compensation. In appropriate cases the court may set the damages at a fixed amount.

6. The patent holder may institute claims for damages or for the surrender of profits on behalf of himself and on behalf of licensees or pledgees, without prejudice to the right of the latter parties to intervene in the claim brought by the patent holder, whether or not it has been brought exclusively or also on their behalf, in order to obtain direct compensation for their damage or in order to be awarded a proportional share of the profits to be surrendered by the defendant. Licensees and pledgees may bring an independent claim as referred to in paragraphs (4) and (5) only if they have demanded that the patent holder grant them authorisation to do so.

7. The patent holder is authorised to claim the ownership of any moveable property that infringes his right or to claim the power to remove such property from the market, to destroy it or to render it unusable, and to demand that materials and machines that are used primarily in the production of those goods be removed from the market. The provisions contained in the Dutch Code of Civil Procedure in respect of an attachment and seizure under execution of



moveable property shall apply. In the event that there is more than one attachment, the party who has levied an attachment pursuant to this Article shall have priority. A claim within the meaning of the first sentence shall be executed at the expense of the defendant unless that is barred for special reasons. The assessment of the claim must take into consideration the gravity of the infringement and the measures being claimed, as well as the interests of third parties.

8. If proceedings are brought for the enforcement of a patent relating to a process for the manufacture of a new product, it shall be assumed that the product in question has been manufactured using the patented process unless the defendant can plausibly establish that that is not the case. The provisions contained in Article 4(3) and (4) shall not be taken into consideration in the evaluation of whether a product is new.

9. The patent holder is entitled to claim an order for the cessation of services of intermediaries whose services are used by third parties to infringe his right.

10. The patent holder is entitled to demand that a party who has infringed his right be ordered to inform him of the origin and distribution channels of the goods that have been used to commit the infringement and to provide any and all related information.

11. The patent holder is entitled to demand that if the alleged infringement is temporarily continued, such continuation shall be subject to the condition that security be furnished for the compensation of the damage he has sustained. The patent holder also has this entitlement in the event that an intermediary as referred to in paragraph (9) continues to provide the services in question.

12. The patent holder is entitled to demand that the defendant be ordered to take appropriate measures, at his own expense, to disseminate information regarding the judgment.

#### **Article 71**

1. Subject to the provisions contained in paragraph (4), the patent holder may demand reasonable compensation from any party who has performed acts as referred to in Article 53(1) in the period between

the registration of the application that has led to the patent and the grant of the patent on that application or a divisional application pursuant to Article 28, insofar as the patent holder has been granted exclusive rights in respect of such acts.

2. Subject to the provisions contained in paragraph (4), the patent holder may also demand reasonable compensation from any party who, after the grant of the patent as referred to in paragraph (1), has performed the acts referred to in that paragraph with regard to products that were put on the market during the period stipulated in that paragraph. The patent holder may demand the same compensation from any party who, after the grant of the patent, has used for the purposes of his business products as specified in Article 53(1)(a) or (b) or Article 53a that were manufactured in his business in the period referred to in paragraph (1).

3. The compensation referred to in paragraphs (1) and (2) shall be due only in respect of acts that are performed after the expiry of 30 days following the date on which the party concerned was notified, by means of a bailiff's writ indicating precisely which part of the patent application relates to such acts, of the rights that vest in the patent holder by virtue of this Article.

4. The right that vests in the patent holder by virtue of this Article shall not extend to acts performed by a party who is entitled to perform such acts by virtue of Article 55 or by agreement, nor shall it extend to acts related to products that were put on the market either prior to the registration of the patent application in question or thereafter by the applicant or a person entitled to do so as specified above.

#### **Article 72**

1. Subject to the provisions contained in paragraph (4), the holder of a European patent may demand reasonable compensation from any party who, in the period between the publication pursuant to Article 93 of the European Patent Convention of the application that has resulted in the grant of the patent and the publication, referred to in Article 97(4) of that Convention, of the notification of the grant of the European patent in respect of that application or in respect of a divisional application related thereto by virtue of Article 76 of that Convention, has performed acts as specified in

Article 53(1), insofar as the patent holder has acquired the exclusive right to do so and such acts are within the scope of the most recently filed and published claims.

2. Subject to the provisions contained in paragraph (4), the holder of a European patent may also demand reasonable compensation from any party who, after the publication referred to in paragraph (1) of the notification of the grant of the European patent, has performed acts as referred to in that paragraph with regard to products that were put on the market during the period stipulated in that paragraph. The patent holder may demand the same compensation from any party who, after the aforesaid publication, has used for his business products as specified in Article 53(1)(a) or (b) or Article 53a that were manufactured in his business in the period referred to in paragraph (1).

3. The compensation referred to in paragraphs (1) and (2) shall be due only in respect of acts that are performed after the expiry of 30 days following the date on which the party concerned was informed by means of a bailiff's writ of the right to which the patent holder is entitled by virtue of this Article. That bailiff's writ, which must indicate precisely which part of the patent application relates to such acts, shall be served together with a translation into Dutch of the claims as contained in the publication of the European patent application in accordance with Article 93 of the European Patent Convention. If such a translation has already been sent to the Office prior to the service of the bailiff's writ and an entry has been made in the patent register in that respect, the service of the translation may be omitted, provided that the bailiff's writ refers to the entry in the patent register.

4. The right that vests in the patent holder by virtue of this Article shall not extend to acts that are performed by a party who is entitled to perform such acts by virtue of Article 55 or an agreement, nor shall it extend to acts with regard to products that were put on the market either prior to the publication of the application under paragraph (1) in accordance with Article 93 of the European Patent Convention or thereafter by the applicant or a party who is entitled to do so as specified above.

5. The Office shall make the entry in the patent register referred

to in paragraph (3) as quickly as possible.

### **Article 73**

1. The patent holder may institute the claims at his disposal in enforcing his patent against any party who offers or supplies in the Netherlands or Netherlands Antilles, in or for his business, to parties other than those who by virtue of Articles 55 to 60 are empowered to use the patented invention, the means for the application of the patented invention in the Netherlands or Netherlands Antilles in respect of an essential part of the invention, provided that that person knows, or it is evident in view of the circumstances, that those means are suitable and intended for that application.

2. Paragraph (1) shall not apply if the offer or supply takes place with the consent of the patent holder. That paragraph also shall not apply if the means supplied or offered are products that are generally available in the market, unless the party involved incites the third party to whom he delivers to perform acts specified in Article 53(1).

3. Article 70(5) shall apply *mutatis mutandis*.

### **Article 74**

The rights and obligations ensuing from Articles 53 to 60 and 64 to 73 shall also apply in, on and above that part of the continental shelf contiguous to the Netherlands or the Netherlands Antilles over which the Kingdom has sovereign rights, but exclusively to the extent that such acts are associated with and are performed during exploration for or the recovery of natural resources.

## **Chapter 5 Invalidation and Claim**

### **Article 75**

1. A patent shall be invalidated by the court insofar as:

- a. the subject matter in respect of which the patent was granted was unpatentable by virtue of the provisions contained in Articles 2 to 7 or, if a European patent is concerned, by virtue of the provisions contained in Articles 52 to 57 of the European Patent Convention;
- b. the patent specification does not contain a description of the invention that, in appropriate cases with the application of Article 25(2) and (3), is sufficiently clear and complete to allow a person skilled in the art to use the invention;
- c. the subject matter of the patent extends beyond the content of the patent application that has been filed or the content of the original patent application if the patent has been granted on the ground of a divisional or amended application or on the ground of a new European patent application filed pursuant to Article 61 of the European Patent Convention;
- d. the scope of protection has been extended after the patent is granted; or
- e. the patent holder was not entitled to the patent either by virtue of the provisions contained in Chapter 1 of this Kingdom Act or, if a European patent is concerned, by virtue of Article 60(1) of the European Patent Convention.

2. For the purposes of paragraph (1)(a), the state of the art referred to in Article 54(3) of the European Patent Convention shall also be deemed to include the content of patent applications under this Kingdom Act that were filed on a date prior to the date of filing of the European patent application to which that paragraph applies and that were entered in the patent register pursuant to Article 31 on or after that date.

3. Invalidation proceedings may be instituted in accordance with paragraph (1)(a) to (d) by any party and under paragraph (1)(e) by a party who is entitled to the patent by virtue of the provisions specified therein. If the latter party has been granted a patent in respect of the invention in question, the invalidation proceedings may also be instituted by licensees and pledgees.

4. The writ of summons must be entered in the patent register within

eight days of the date on which it is served. If the entry is not made in a timely manner, the claimant shall be obliged to compensate the damage sustained by any parties who, after expiry of the term and prior to the registration of the rights, acquired in good faith rights affected by the invalidation.

5. A patent shall be deemed from the outset not to have had any or some of the legal effects specified in Articles 53, 53a, 71, 72 and 73 to the extent that the patent has been wholly or partially invalidated.

6. The retroactive effect of the invalidation shall not extend to:

- a. a decision, other than one granting injunctive relief, relating to acts that infringe the exclusive right of the patent holder referred to in Article 53 and 53a or relating to the acts referred to in Articles 71, 72 and 73 that have acquired the force of *res judicata* and have been enforced prior to the invalidation; or
- b. any agreement concluded prior to the invalidation insofar as it has been performed prior to the invalidation; however, in the interest of equity the repayment of sums paid under the agreement may be claimed to the extent justified under the circumstances.

7. For the purposes of paragraph (6)(b), the conclusion of an agreement shall also be deemed to include a licence created in another manner provided for in Article 56(2), 59 or 60.

8. In the event that a patent is invalidated on the grounds referred to in paragraph (1)(e) and the party who is entitled to the patent by virtue of the provisions contained therein has obtained a patent for the relevant invention himself, licences that are acquired in good faith in respect of the invalidated patent prior to the date on which the writ of invalidation was recorded in the register shall be deemed to be licences under the existing patent. The holder of such a patent shall be entitled pursuant to Article 56(3) to the fees due for the licences. The holder of the invalidated patent who acted in good faith when filing his application or who obtained the patent in good faith from a previous holder prior to the date on which the writ of summons was registered shall continue to have the right in respect of the existing patent to use the invention in the manner specified in Article 55.

9. As soon as a decision in invalidation proceedings has become final and has acquired the force of *res judicata* or the proceedings have lapsed, an entry to this effect shall be made in the patent register at the request of the initiating party.

#### **Article 76**

1. The action of a party seeking invalidation pursuant to Article 75 of a patent issued pursuant to this Kingdom Act shall be deemed inadmissible if the party does not attach as an appendix to the writ of summons or the statement of counterclaim the results of an advisory report issued by the Office concerning the applicability of the grounds for invalidation as indicated in Article 75(1).

2. The court in summary proceedings referred to in Article 80(2) may require any party arguing that a patent granted pursuant to this Kingdom Act should be invalidated to submit an advisory report issued by the Office concerning the applicability of the grounds of invalidation as indicated in Article 75(1).

#### **Article 77**

1. Insofar as a patent granted in accordance with this Kingdom Act relates to an invention in respect of which a European patent has been granted to the same inventor or his successor in title and the date of filing or, as the case may be, the priority date of the patent applications concerned are the same, the former patent shall cease to have the legal effects specified in Articles 53, 53a, 71 and 73 in the Netherlands or in the Netherlands Antilles insofar as it protects the same invention as the European patent or in the Netherlands insofar as a Community patent is involved, as from the date on which:

a. the term laid down for filing notice of opposition to the European patent has expired without notice of opposition having been filed;

b. the opposition proceedings have been concluded and the European patent has been upheld; or

c. the patent has been granted by virtue of this Kingdom Act, if that date is later than the date referred to in (a) or (b), as the case may be.

2. The loss, for whatever reason, of the European patent as at a later date shall not affect the provisions contained in the

preceding paragraph.

3. Proceedings to ascertain a loss of rights as referred to in paragraph (1) may be instituted by any party.

4. Article 75(4), the first sentence of (8), and (9) shall apply *mutatis mutandis*.

#### **Article 78**

1. An action claiming entitlement to a patent in whole, in part or in joint ownership may be instituted by any party who, pursuant to Articles 11, 12 or 13 or, if a European patent is concerned, under Article 60(1) of the European Patent Convention, is entitled to or is jointly entitled to the patent.

2. The writ of summons claiming entitlement must be entered in the patent register.

3. The patent holder who acted in good faith when filing his application, or who obtained the patent in good faith from a previous holder prior to the date on which the writ of summons claiming entitlement was registered, shall continue to have the right, in respect of the new patent holder, to use the invention in the manner specified in Article 55.

4. Licences obtained in good faith prior to the registration date shall continue to have effect in respect of the new patent holder; the latter will be entitled to the fee due for licences pursuant to the provisions contained in Article 56(3).

5. The provisions contained in paragraphs (3) and (4) shall not apply if the party who has successfully claimed entitlement to the patent previously claimed entitlement by filing a patent application himself and the writ of summons claiming entitlement was entered in the patent register within three months after the date on which the patent was granted or, if a European patent is concerned, from the date on which the notification of the grant of the European patent was published in accordance with Article 97(4) of the European Patent Convention.

6. Pledges established by a previous patent holder shall be binding



on the new patent holder only if the rights were acquired in good faith and the pledge was established before the date on which the writ of summons was registered. Under no circumstances shall they be binding on the new holder in the case referred to in the preceding paragraph.

7. The claim referred to in paragraph (1) shall lapse upon the expiry of a period of five years from the date on which the patent was granted or, if a European patent is concerned, from the date on which the notification of the grant of the European patent was published in accordance with Article 97(4) of the European Patent Convention; however, the lapse of such a claim may not be invoked by a party who knew or should have known at the time at which he acquired the patent that he, or the person who assigned the patent to him, was not entitled to it.

8. As soon as a decision on a claim to entitlement has become final and has acquired the force of *res judicata* or the proceedings have lapsed, an entry to that effect shall be made in the patent register at the request of the initiating party.

#### **Article 79**

1. Any party who deliberately infringes the rights of the patent holder by performing one of the acts specified in Article 53(1) shall be punished by means of imprisonment for no more than six months or by means of a fine in the fourth category.

2. Any person who makes a profession or a business of the criminal acts referred to in the preceding paragraph shall be punished by means of imprisonment for no more than four years or by means of a fine in the fifth category.

3. The court may order that its judgment be published.

4. If any objects have been forfeited, the patent holder may demand that those objects be surrendered to him, provided that he applies to the court registry in that respect within one month after the judgment has become final and has acquired the force of *res judicata*. Such surrender shall confer title to these objects on the patent holder. The court may declare that the surrender shall take place only after compensation, to be set by the court and paid by the

patent holder, has been paid to the State.

5. The criminal acts referred to in this Article are misdemeanours. In the Netherlands, such misdemeanours shall be heard in the first instance exclusively by the District Court of The Hague.

## **Chapter 6 Disputes Concerning Patent Rights**

### **Article 80**

1. The District Court of The Hague shall have exclusive jurisdiction in the first instance in respect of:

- a. actions to determine the absence of legal effect, the invalidation or the loss of legal effect of a patent or to determine claims to entitlement to a patent as referred to in Articles 10, 75, 77 and 78;
- b. actions claiming entitlement to European patent applications;
- c. actions seeking the grant of a licence as referred to in Article 58(1); and
- d. actions seeking a remuneration award as referred to in Articles 58, 59 and 60.

2. The District Court of The Hague and that Court ruling in summary proceedings shall have exclusive jurisdiction in the Netherlands in the first instance with respect to:

- a. the actions referred to in Articles 70, 71, 72 and 73; and
- b. actions instituted by a party other than the patent holder to obtain a ruling that certain acts performed that party do not constitute an infringement of a patent.

### **Article 81**

Notwithstanding the provisions contained in Article 8:7 of the Dutch General Administrative Law Act (*Algemene wet bestuursrecht*), the District Court of The Hague shall have jurisdiction over appeals lodged against decisions rendered on the ground of this Act.

### **Article 82**

Patent agents have the right to speak at hearings in respect of disputes within the meaning of Article 80, without prejudice to the *procureur's* responsibility.

### **Article 83**

1. All disputes other than those specified in Articles 80 and 81 shall be brought before the court that has jurisdiction under the general rules governing the administration of justice.

2. Legal claims that are based on provisions contained in Article

12(6) shall be deemed to be proceedings relating to a contract of employment unless the legal relationship between the parties involved is not governed by an employment contract.

3. If the court is of the opinion that a decision on a matter in dispute may be affected by proceedings that have been instituted or that could be instituted on the ground of Articles 10, 75, 77 or 78, the court may stay the proceedings relating to the matter in dispute, with or without setting a term for the suspension. The court may also do so if a decision relating to such proceedings may be affected by proceedings instituted on different grounds.

4. The court may stay proceedings relating to a dispute in respect of a European patent, with or without setting a term, if notice has been given to the European Patent Office of opposition to that patent by virtue of Article 99 of the European Patent Convention.

#### **Article 84**

1. Any party may request the Office in writing to provide an advisory report on the applicability of the grounds for invalidation specified in Article 75(1) to a patent granted on the basis of this Act.

2. The request shall contain a substantiated indication of the objections derived from Article 75(1) in respect of the patent granted concerning which an advisory report is requested.

3. Rules concerning the fee to be paid for an advisory report shall be enacted under or by virtue of a general order in council for the Kingdom.

#### **Article 85**

1. The Office shall give the petitioner referred to Article 84 an opportunity to explain the objections raised. The Office may add as objections grounds for invalidity that it bases on the results of the search of the state of the art as referred to in Article 34(4). The holder of the patent in question shall be given an opportunity to respond to the objections at least once.

2. The Office is authorised to set terms within which the petitioner and patent holder must make their submissions.

3. The advisory report referred to in Article 84 shall be issued as quickly as possible, but in any event not later than two months after the Office has been informed of the views of the petitioner and the patent holder, or, if the preceding paragraph applies, within two months of the expiration of the term set.

#### **Article 86**

The advisory report referred to in Article 84 shall consist of a substantiated evaluation of the objections referred to in Article 85(1).

#### **Article 87**

1. The Office is obliged to provide the court with all the information and technical advice that it may require to render a decision in legal proceedings subject to its jurisdiction concerning patents.

2. Advice as referred to in paragraph (1) shall be equated with that of experts as referred to in Articles 194 *et seq.* of the Dutch Code of Civil Procedure.

#### **Article 88**

The Court referred to in Article 80 shall act as a central authority responsible for the receipt of rogatory letters and is authorised to act on such letters from the European Patent Office, referred to in Article 99 of the Implementing Regulations that form part of the European Patent Convention.

#### **Article 89**

A copy of all court decisions rendered in patent matters shall be sent to the Office free of charge within one month by the clerk of the court that has rendered the judgment and, if a European patent is involved, also to the European Patent Office referred to in the European Patent Convention.

## **Chapter 7 Supplementary Protection Certificates**

### **Article 90**

For the purposes of this Chapter, with the exception of Article 98 and the provisions based on it:

'Regulation' means Regulation (EEC) No. 1768/92 of 18 June 1992 on the creation of a supplementary protection certificate for medicinal products (Official EC Journal L 182), as most recently amended by Regulation No. 1901/2006 of the European Parliament and the Council of the European Union of 12 December 2006 on medicinal products for paediatric use and amending Regulation (EEC) No. 1768/92, Directive 2001/20/EC, Directive 2001/83/EC and Regulation (EC) No. 726/2004 (Official EC Journal L 378);

'Basic patent' means a patent as referred to in Article 1(c) of the Regulation;

'Certificate' means a supplementary protection certificate as referred to in Article 1(d) of the Regulation;

'Request for an extension of the term of a certificate': a request for an extension of the term of a certificate that has already been granted as referred to in Article 1(e) of the Regulation.

### **Article 91**

The application for a certificate and for an extension of the term of a certificate shall be filed with the Office.

### **Article 92**

Upon application for a certificate and for an extension of the term of a certificate, proof must be provided that an amount has been paid to the Office in accordance with a rate to be set by general order in council for the Kingdom.

### **Article 93**

Articles 24(3), 26 and 38(1) of this Kingdom Act shall apply *mutatis mutandis* with respect to applications for a certificate and for an extension of the term of a certificate.

### **Article 94**

If the provisions contained in Article 8 of the Regulation or Articles 92 and 93 of this Kingdom Act have not been complied with, the Office shall so inform the applicant in writing within one month of the filing of the application for a certificate or the request

for an extension of the term of a certificate, stating the requirements that have not been met.

**Article 95**

In order to maintain a supplementary protection certificate, an amount to be set by general order in council for the Kingdom shall be paid to the Office each year as from the year in which the legal term of the basic patent has expired. That amount shall be paid no later than on the last day of the month in which the legal term of the basic patent has expired. Articles 61(3) and 62 of this Kingdom Act shall apply *mutatis mutandis*.

**Article 96**

1. The notifications required by Articles 9(2) and (3), 11 and 16 of the Regulation shall be published in the journal referred to in Article 20 of this Kingdom Act.

2. The Office shall record the information specified in Articles 9(2) and (3), 11 and 16 of the Regulation in the patent register.

**Article 97**

Articles 64 to 69 inclusive shall apply *mutatis mutandis* in respect of certificates.

**Article 98**

If a regulation other than a regulation established by the Council of the European Communities concerning supplementary protection certificates as referred to in Article 90 is required in the interest of proper implementation, it shall be enacted by general order in council for the Kingdom. Such a regulation may provide for the levy of fees, insofar as that is permitted under the regulation concerned.

## **Chapter 8 Special Provisions for the Netherlands Antilles**

### **Article 99**

An industrial property office may be established in the Netherlands Antilles. That office shall be an institution of that country.

### **Article 100**

1. Residents of the Netherlands Antilles may file patent applications with the industrial property office established there.

2. The date of filing of the application shall be deemed to be the date on which the documents indicated in Article 29(1)(a), (b) and (c) are filed with the office concerned. Article 29(2) and (3) shall apply *mutatis mutandis*.

3. After the office concerned has recorded the date referred to in paragraph (2) on the application, it shall send the application with all the documents that have been filed to the Office referred to in Article 1 as quickly as possible, unless it is of the opinion that the filing does not meet the requirements specified in or by virtue of Article 24.

4. In the case referred to in paragraph (3), the office concerned shall inform the applicant of the alleged defects in writing and shall request the applicant to remedy those defects within a term to be set by the office. After that term has expired, and regardless of whether or not the request has been complied with, the documents filed by the applicant, accompanied by a copy of the receipt issued to him, shall be sent by the office concerned to the Office referred to in Article 1 as quickly as possible.



## **Chapter 9 Transitional and Final Provisions**

### **Article 101**

The Patents Act of the Kingdom shall be repealed with effect from a time to be set by Royal Decree.

### **Article 102**

1. Patent applications that have been filed before 1 April 1995 and divisional patent applications related to such applications shall be governed by the Patents Act of the Kingdom and Articles 102a to 102e.
2. The following shall be governed exclusively by the provisions contained in this Kingdom Act:
  - a. patent applications filed after this Kingdom Act has entered into force, with the exception of the divisional patent application referred to in paragraph (1);
  - b. patents granted on the ground of the applications referred to in (a) above; and
  - c. licences under the patents referred to in (b) above.
3. This Kingdom Act shall not apply with respect to applications for certificates as referred to in Article 90 that have been filed with the Office prior to the date upon which this Kingdom Act enters into force.
4. Articles 95 and 97 shall also apply in respect of certificates granted on applications filed prior to the date upon which this Kingdom Act enters into effect.

### **Article 102a**

1. With regard to patent applications in respect of which the applicant has been notified of the search of the state of the art but the applications department of the Patent Office has not yet rendered a decision within the meaning of Article 24 of the Patents Act of the Kingdom on the date on which this Article enters into effect, notwithstanding the provisions contained in Chapter II, Part II, of that Kingdom Act the Patent Office shall grant the patent by making a dated note on the application in the form in which it has been filed by the applicant or subsequently amended by him.
2. If on the date on which this Article enters into effect the

applicant has not yet been notified of the result of the search of the state of the art, the patent shall be granted as from two months after the date on which the applicant has been notified of the result of the search of the state of the art, which term the Patent Office may extend once by a term of two months at the applicant's request.

#### **Article 102b**

1. Notwithstanding the provisions contained in Chapter II, Part II, of that Kingdom Act, the Patent Office shall grant the patent on the basis of patent applications that the applications department or the appeals department of the Patent Office decides to publish in whole or in part after this Article has entered into effect on the ground of Article 24 or 24A of that Kingdom Act, by making a dated note on the application in the form in which it has been found to be eligible to be granted by the applications department or appeals department.

2. The patent will enter into effect as from the date of the decision to publish it in whole or in part.

#### **Article 102c**

1. As from the date on which Article 102a enters into effect, Article 102a shall apply *mutatis mutandis* in respect of patent applications that are governed by Articles 29A to 29F of the Patents Act of the Kingdom, on the understanding that:

a. the Patent Office shall decide to grant the patent by placing a dated note on the application, but the registration of the patent application in the patent register and the grant of the patent shall be postponed; and

b. Articles 41 to 45 shall apply *mutatis mutandis* in respect of the patent applications.

2. Paragraph (1) shall apply *mutatis mutandis* in respect of Article 102b.

#### **Article 102d**

1. As from the date on which this Article enters into effect or as from the date on which the patent is granted if that date is later, the patents that have been granted on the ground of the Patents Act of the Kingdom or that have been granted on the ground of Articles

102a, 102b or 102c shall have the same legal effect in the Netherlands and the Netherlands Antilles as patents that have been granted on the ground of Article 36, and the provisions contained in this Kingdom Act shall apply on the understanding that:

- a. the application of Article 76 shall be limited to patents that have been granted on the ground of Article 102a or Article 102c(1); and
- b. the application of Articles 84 to 86 shall be limited to patents that have been granted on the ground of Articles 102a, 102b or 102c.

2. As from the date on which this Article enters into effect or as from the date on which the patent is granted if that date is later, the patents that have been granted on the ground of the Patents Act of the Kingdom or that are granted on the ground of Articles 102a, 102b or 102c shall have the same legal effect in Aruba as patents that have been granted on the ground of Article 34 of the National Ordinance of Aruba of 5 May 1997 on rules with respect to patents (*Octrooiverordening*).

#### **Article 102e**

1. Article 23 of the 1995 Patent Acts of the Kingdom governs a request for a re-establishment that is submitted after this Article enters into effect.

2. The Office shall grant a patent application that is re-established after this Act enters into effect by placing a dated note on the application in the form in which it has been filed by the applicant or subsequently amended by him.

3. The patent shall enter into effect as from the date on which the decision to re-establish it has become irrevocable.

#### **Article 102f**

The public part of the registers that are maintained on the ground of the Patent Acts of the Kingdom shall form part of the register referred to in Article 19 as from the time referred to in Article 101.

#### **Article 103**

1. As from the date on which this paragraph enters into effect, European patents in respect of which a notification of their being

granted has been published in accordance with Article 97(4) of the European Patent Convention prior to the entry into force of this Act, and licences under such patents, shall be governed by the provisions contained in this Kingdom Act.

2. European patents in respect of which a notification of their being granted has been published in accordance with Article 97(4) of the European Patent Convention after the entry into force of this Act, and licences under these patents, shall be governed exclusively by the provisions contained in this Kingdom Act.

**Articles 104 - 107 [Contain amendments to other regulations.]**

**Article 108**

1. Articles 57 to 58a govern licences under patents that have been granted on the ground of the Patent Act of the Kingdom or that are granted on the ground of Articles 102a, 102b or 102c.

2. If, prior to the entry into force of this Kingdom Act, a request is made for the grant of a licence in accordance with Article 34(5) of the Patent Act of the Kingdom, paragraph (1) shall not apply.

**Article 109**

The state of the art, referred to in Articles 4 and 75(2), shall also comprise the content of patent applications filed before the entry into force of this Kingdom Act that are open to public inspection in accordance with Article 22C of the Patent Act of the Kingdom on or before the date referred to in Article 4(2) of this Act or Article 80 of the European Patent Act or, if they were not open to public inspection, are published in accordance with Article 25 of that Kingdom Act.

**Article 110**

If the matters provided for in this Kingdom Act require further regulation in the interest of the proper implementation thereof, that may be provided for by general order in council for the Kingdom.

**Article 111**

The articles contained in this Kingdom Act shall enter into force at a time to be set by Royal Decree, which may differ for the various articles or parts hereof.

**Article 112**

This Kingdom Act is to be referred to as: *Rijksoctrooiwet* (the 'Patents Act of the Kingdom' or the 'Dutch Patent Act'), noting the year of the Dutch Bulletin of Acts and Decrees in which it has been published.

**Article 113**

1. This Kingdom Act shall be binding for the Netherlands and, with the exception of Chapter 7, for the Netherlands Antilles.

2. This Act shall be binding for Aruba only with respect to Articles 40 to 45, 59, 101, 102(1), 102a to 102f, 104 to 108, 111 and 114.

For the application of Articles 40 to 45 in Aruba, 'Office' shall be defined as the Office for Intellectual Property of Aruba (*Bureau voor de Intellectuele Eigendom van Aruba*).

**Article 114**

The various regulations provided for in this Kingdom Act may be revoked by means of an act in the Netherlands and by means of a national ordinance on the Netherlands Antilles and Aruba. With effect from the third calendar year following the year in which such an act or national ordinance is published, this Kingdom Act shall acquire the status of an act in the Netherlands and of a national ordinance on the Netherlands Antilles and Aruba. The provisions contained in the previous sentences shall not apply in respect of Articles 40 to 45 and Article 59.