

**SWEDEN**  
**PATENTS ACT**

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## **Chapter 1. General Provisions**

### **Article 1**

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

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

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

### **Article 1a**

Patents are not granted in respect of plant varieties or animal breeds. A patent may, however, be granted in respect of an invention that relates to plants or animals if the technical feasibility of the invention is not confined to a particular plant variety or animal breed. The concept of a plant variety is defined in Chapter 1, Article 3, of the Act on the Protection of Plant Varieties Rights.

Patents shall not be granted in respect of essentially biological processes for the production of plants or animals. As an essentially biological process for the production of plants and animals shall be considered any process which entirely consists of natural phenomena, such as crossing or selection. A patent may, however, be granted for an invention that concerns a microbiological process or another technical process or a product obtained by means of such a process. As a microbiological process shall be considered any process which is performed upon microbiological material or by means of which such material is used or produced.

An invention may be patentable even if it concerns a product consisting of or containing biological material or a process through which biological material is being produced, processed or used. A biological material which is isolated from its natural environment or produced by means of a technical process may be the subject of an invention even if it previously occurs in nature. Biological material includes any material containing genetic information and being capable of

reproducing itself or being capable of reproduction in a biological system.

#### **Article 1b**

The human body at the various stages of its formation and development, as well as the mere discovery of one of its elements, including the sequence of a gene or a partial sequence of a gene, cannot constitute a patentable invention.

An isolated element of the human body or an element otherwise produced by means of a technical process, including a gene sequence or a partial sequence of a gene, may constitute a patentable invention, even if the structure of that element is identical with that of a natural element.

#### **Article 1c**

Patents shall not be granted for an invention where the commercial exploitation would be contrary to public order or morality.

Exploitation shall not be deemed to be contrary to public order or morality only because it is prohibited by law or other statutes.

For the purposes of the application of the first Paragraph the following shall, inter alia, be considered as contrary to public order or morality,

1. processes for cloning of human beings;
2. processes for modifying the genetical identity of human sex cells;
3. the use of human embryos for industrial or commercial purposes, and
4. processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit for humans or animals.

The provisions of the third Paragraph, item 4, relating to processes for modifying the genetic identity of animals apply, mutatis mutandis, to animals produced by means of such a process.

#### **Article 1d**

Patents shall not be granted for a process for surgical or therapeutic treatment or for diagnostics to be practiced on humans or animals.

Patents may, however, be granted for products, inter alia substances or compounds of substances, for use in any of such processes.

#### **Article 2**

Patents shall only granted for an invention that is new in relation to what was known before the filing date of the patent application and which also differs essentially therefrom.

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

Provisions stating that, when applying the second Paragraph, an application referred in Chapter 3 or 11 in certain cases has the same effect as a patent application made in Sweden are to be found in Articles 29, 38 and 87.

The requirement in the first Paragraph that the invention shall be new, does not prevent the granting of a patent for a known substance or a known compound of substances for use in a process referred to in Article 1d, provided that the use of the substance or the compound of substances is not known in any such process. Furthermore this requirement does also not prevent the granting of a patent for a known substance or a known compound of substances for a specific use in a process referred to in Article 1 d, if such a use is not known.

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

1. in consequence of an evident abuse in relation to the applicant or his successor in title, or
2. because the applicant or his successor in title has displayed the invention at an official or officially recognised exhibition as referred to in the Convention on International Exhibitions finalised at Paris on November 22, 1928.

### **Article 3**

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

1. making, offering, putting on the market or using a product protected by the patent or importing or possessing such a product for any of these purposes,
2. using a process which is protected by the patent knowing, or it being obvious from the circumstances, that the process cannot be used without the consent of the holder of the patent, offering the process



for use in Sweden,

3. offering, putting on the market, or using a product prepared by a process protected by the patent or importing or possessing the product for any of these purposes.

The exclusive right also implies that no one may, without the consent of the holder of the patent, exploit the invention by offering or supplying to a person who is not entitled to exploit the invention such means for carrying out the invention in Sweden which relate to an essential element of the invention, if the person offering or supplying the means knows, or it is obvious from the circumstances, that the said means are suited and intended for use in the carrying out of the invention. If the means are generally available in commerce, this Paragraph only applies if the person offering or supplying the means attempts to induce the receiver to commit the acts referred to in the first Paragraph. In applying the provisions of this Paragraph, persons using the invention in a manner specified in the third paragraph, items 1, 3, 4 or 5, shall not be considered as entitled to use the invention.

The following acts are exempted from the exclusive right:

1. use which is not commercial,
2. use of a product protected by patent which is put on the market within the European Economic Area by the holder of the patent or with his consent; as regards biological material this applies also to uses in the form of reproduction or multiplication of a product when the reproduction or multiplication is a necessary element of the use for which the biological material has been put on the market, provided that the product obtained is not later used for further reproduction or multiplication.
3. use of the invention for experiments which relate to the invention itself,
4. studies, tests, examinations and practical measures which concern a reference medicine to the extent that these are necessary for obtaining an approval for the sale of a medicine according to Article 8 of the Act on Medicinal Products or for other proceedings for approval based on Article 10.1.4 of the Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community Code relating to Medicinal Products for Human Use, as last amended by Directive 2004/27/EC, of the European Parliament and of the Council, or Article 13.1.13.5 of Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community Code Relating to Veterinary Medicinal Products, as last amended by

Directive 2004/28/EC of the European Parliament and the Council,  
5. preparation in pharmacies of medicines in accordance with a prescription by a physician in an individual case or acts relating to medicines prepared in such cases.

### **Article 3a**

The exclusive right conferred by a patent for a biological material possessing specific characteristics as a result of the invention shall extend to any biological material in an identical or a divergent form possessing those same characteristics derived from the biological material through reproduction or multiplication.

The protection conferred by a patent on a process that enables a biological material to be prepared possessing specific characteristics as a result of the invention, shall extend to, in addition to the biological material possessing those characteristics that is directly obtained through this process, also to any other biological material in an identical or a divergent form possessing those same characteristics as those obtained through reproduction or multiplication from the biological material first produced.

The exclusive right conferred by a patent on a product containing or consisting of genetic information shall, with the exception of what cannot constitute a patentable invention pursuant to Article 1 b, first Paragraph, extend to all material in which the product is incorporated and in which the genetic information is contained and performs its function.

### **Article 3b**

Where the holder of the patent or someone with his consent assigns plant propagating material to a farmer for agricultural use, the farmer may, notwithstanding Articles 3 and 3 a, use the product of the harvest for reproduction or multiplication in his own agricultural activity. The extent of, and the conditions for this derogation from the exclusive right of the holder of the patent are corresponding to those in Article 14 of the Council Regulation (EC) No 2100/94 of 27 July, 1994 on the Community Plant Variety Right and the Implementing Regulations issued pursuant to that Article.

Where the holder of the patent or someone with his consent assigns breeding stock or other animal reproductive material to a farmer, the farmer may, notwithstanding Articles 3 and 3 a, use the livestock or other animal reproductive material for agricultural purposes within his agricultural activity. The farmer may, however, not sell protected

breeding stock or other material within the framework of, or for the purpose of, a commercial reproduction activity.

The right of the farmer under the second Paragraph must not be exercised to a wider extent than what is reasonable taking into account the needs of the farmer and the interests of the patent holder.

#### **Article 4**

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

The right pursuant to the first Paragraph may only be transferred to others together with the business where it originated or where the use was intended to take place.

#### **Article 5**

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

The Government may prescribe that, notwithstanding the existence of a patent, spare parts and accessories to an aircraft may be imported into this country and used here for the repair of an aircraft domiciled in a foreign country in which corresponding privileges are granted to a Swedish aircraft.

#### **Article 6**

An application for a patent on an invention which was, within twelve months prior to the filing date according to Articles 8 c or 8 d, mentioned in an earlier application for a patent in Sweden, shall, when applying Article 2, first, second and fourth Paragraphs, and Article 4, be considered to have been filed simultaneously with the earlier application, if the applicant so claims in accordance with Articles 6 a to 6 e (priority). The same applies in respect of an application for a patent on an invention which was, within twelve months prior to the filing date, mentioned in an earlier application for a patent, an inventors' certificate or for

protection as a utility model either in a foreign state party to the Paris Convention of March 20, 1883, for the Protection of Industrial Property or in a state or a territory party to the Agreement Establishing the World Trade Organization (WTO). Such priority may be enjoyed also from an application for protection relating to any other state or any other territory, if a corresponding priority from a Swedish patent application is enjoyed where the earlier application was filed and if the legislation in force there essentially corresponds to the Paris Convention for the Protection of Industrial Property.

#### **Article 6a**

If the applicant wishes to claim priority from an earlier application, a request to this effect shall be filed within 16 months from the filing date for the application which is claimed as giving rise to priority, or, if that point in time is later, within four months from the filing date for the latest application according to Article 8 c or 8 d. When priority is claimed, the applicant shall provide information about where and when the application was filed to which reference is made and, if this is an international application, at which Receiving Authority it was filed. The applicant shall also, as soon as possible, indicate the number of the earlier application.

The applicant may, within the time and under the conditions prescribed in the first Paragraph, make an amendment in respect of the claim for priority by a communication to this effect to the Patent Authority. If the amendment signifies that the filing date for the application claimed as giving rise to priority becomes a date earlier than the filing date originally referred to, the new filing date shall apply when applying the first Paragraph.

In respect of an international patent application according to Chapter 3, priority shall be claimed in the application or within the time prescribed in the fourth Paragraph. The applicant shall at the same time provide information about where and when the application was filed to which reference was made and its number and, if this is an international application, at which Receiving Authority it was filed.

In respect of an application referred to in the third Paragraph, the applicant may make an amendment of the claim for priority through a communication to this effect to the Receiving Authority or to the International Bureau as prescribed in Article 35. If the amendment signifies that the applicant claims priority from an application other than the one originally referred to, the applicant shall, in the communication, provide information about the application as prescribed

in the third Paragraph. Such a communication shall be filed within 16 months from the filing date for the application referred to as a basis for priority. If the amendment implies that the filing date becomes a date earlier than the filing date originally claimed, the communication shall be made within 16 months from the new filing date. The applicant has, however, always the possibility to file a communication about an amendment within four months from the international filing date.

If several inventions are described in the basic documents and the application is divided in accordance with regulations prescribed pursuant to Article 11, a claim for priority in respect of the original application shall apply also to any new application resulting from the division.

A request or a communication pursuant to the first to fourth Paragraphs, cannot be made if the applicant has requested an earlier publication according to Article 22, third Paragraph.

#### **Article 6b**

An applicant who has claimed priority shall within 16 months from the date from which priority is claimed file, at the Patent Authority, the following documents relating to the earlier application.

1. A certificate indicating the name of the applicant and the filing date, issued by the Authority that has received the application.
2. A copy of the application certified by the same Authority.

If the certificate or the copy has not been received within the time prescribed in the first Paragraph, the Patent Authority shall notify the applicant and give him an opportunity to file the documents within two months from the date of the notification.

The certificate or the copy does not have to be filed if the earlier application has been filed at the Patent Authority.

#### **Article 6c**

In the case of an international patent application according to Chapter 3, the provisions of the second to fourth Paragraphs apply with regard to the applicant's obligations according to Article 6 b.

The applicant shall file the certificate referred to in Article 6 b, first Paragraph, item 1, only if the Patent Authority invites the applicant to do so.

Instead, the applicant may, in accordance with Rule 17.1 in the Regulations under the Patent Cooperation Treaty done at Washington on June 19, 1970, file the copy of the earlier application at the

International Bureau mentioned in Article 35 or at the Receiving Authority, or request it to be transferred to the International Bureau according to the same Rule.

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

#### **Article 6d**

Priority may be claimed only on the basis of the first application in which the invention was mentioned.

If the person who filed the first application or his or her successor in title has later, at the same Authority, filed an application relating to the same invention, the later application may be claimed as a basis for priority. This applies, however, only if the prior application has, when the later application is filed,

1. been withdrawn, dismissed or rejected without having been published, and
2. does not leave any right outstanding that is based on it or has served as the basis for any right of priority.

If anyone has been granted a right of priority on the basis of a subsequent application pursuant to the second Paragraph, the prior application may no longer be invoked as a basis for priority.

#### **Article 6e**

An applicant may obtain priority also for a part of an application. For one and the same application priority may be claimed from several prior applications. This applies also if the applications relate to different countries.

#### **Article 6f**

The Government or, pursuant to an authorization by the Government, the Patent Authority may issue provisions concerning

1. in which form a claim for priority shall be made,
2. in which form evidence and copies referred to in Article 6 b shall be filed.

The Government or, following an authorization by the Government, the Patent Authority may issue provisions on exceptions in certain cases from the obligation under Articles 6 b - 6 c to file evidence and copies .

**Article 6g**

If the provisions in Articles 6 a . 6 e are not complied with, the right of priority shall not apply.

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

### **Article 7**

The Patent Authority in this Act refers to the Patent Authority in this country unless otherwise stated.

The Patent Authority in this country is the Patent and Registration Office.

### **Article 8**

An application for a patent shall be filed at the Patent Authority or, in cases referred to in Chapter 3, at the Patent Authority in a foreign State or at an International Organization.

The application shall contain a description of the invention, also comprising drawings if such are necessary, and specified indications about what is claimed to be protected by the patent (patent claims). The fact that the invention relates to a chemical compound does not imply that a specified use must be indicated in the patent claim. The application shall contain a statement as to how the invention is susceptible of industrial application, if this does not follow from the character of the invention. If the invention relates a gene sequence or a partial sequence of a gene, the application must, however, always indicate how the invention can be applied industrially. The description shall be sufficiently clear for it to be carried out by a person skilled in the art with the guidance thereof. An invention that relates to a biological material, or involves the use of such material, shall, in the cases referred to in Article 8 b, be considered to be disclosed with sufficient clarity only if the conditions in the said Article are also fulfilled.

The application shall also contain an abstract of the description and the patent claims. The abstract is intended merely to provide technical information about the contents of the patent application and it may not be taken into account for any other purpose.

The applicant shall state the inventor's name and address in the application. If a patent is applied for by someone other than the inventor, the applicant shall, in the application, state the basis for his right to the invention.

The Patent Authority shall accept this statement, if there is no specific reason to question whether it is correct. The Patent Authority shall notify the person whom the applicant has indicated as the inventor about the application where this is not evidently unnecessary. The applicant shall pay an application fee. For the application, an



annual fee shall also be paid for each fee year beginning before the application has been finally decided on.

A fee year according to this Act comprises one year and is calculated from the date of filing pursuant to Article 8 c or Article 8 d. and thereafter from the corresponding date according to the calendar.

#### **Article 8a**

The description, the patent claims and the abstract contained in a patent application shall be drawn up in Swedish or in English, unless otherwise follows from a regulation.

The application shall indicate if the patent shall be granted in a Swedish or in an English version.

#### **Article 8b**

If an invention relates to a biological material which is neither available to the public nor can be described in the application documents so as to enable a person skilled in the art to carry out the invention with the guidance thereof, or if the invention implies the use of such material, the biological material shall be deposited no later than on the date of filing of the application. The biological material shall thereafter be continuously kept deposited so that anyone who is entitled under this Act to receive samples of the material can have his sample delivered in Sweden. The Government specifies where deposits may be made.

If a deposited biological material ceases to be viable or if samples from the material for another reason cannot be supplied, it may be replaced by a new deposit of the same biological material within the time and in the manner prescribed by the Government. If this has been done, the new deposit shall be considered to have been made on the date when the earlier deposit was made.

#### **Article 8c**

The filing date for a patent application shall be the date when the following information has been filed:

1. an explicit or implicit indication that what has been filed is an application for a patent,
2. information that makes it possible for the Patent Authority to determine who the applicant is and how to contact him, and
3. indications that appear to be a) a description of the invention, or b) drawings relating to the invention, or
4. a reference to a patent application filed earlier, and, if this

application has not been filed at the Patent Authority, a copy of the application and an indication of its filing date, number and the Patent Authority at which it has been filed.

If the requirements for determining a filing date have not been fulfilled and the Patent Authority has in its possession information that makes it possible to contact the applicant, the Patent Authority shall without delay invite the applicant to remedy the deficiencies within two months from the date of the invitation.

If the deficiencies have not been remedied within the prescribed time, no patent application shall be deemed to have been filed and the case be dismissed. The same shall apply if it has not been possible to issue an invitation and the deficiencies have not been remedied within two months from the date when any of the information items according to the first Paragraph was filed. Information about the consequences that would result if the deficiencies have not been remedied shall be included in the invitation.

If the deficiencies have been remedied within the time prescribed in the third Paragraph, the filing date for the patent application shall be considered to be the date when all the deficiencies have been remedied, unless otherwise follows from Article 8d.

#### **Article 8d**

If the Patent Authority finds, in the course of the examination pursuant to Article 8 b, that a part of the description or a drawing to which reference is made in the description or in the patent claims, is missing, the applicant shall be invited to complete the documentation within two months from the date of the invitation. If a completion of such missing parts is provided within the time prescribed in the invitation, the date of filing shall be considered to be the later date when the completion was provided, unless otherwise follows from the second and third Paragraphs. The same applies if an invitation has not been issued and a completion has been provided within two months from the date when any of the information items according to Article 8b, first Paragraph, was filed.

If parts that complete an application are withdrawn within one month from their filing according to the first Paragraph, the original filing date for the application shall apply.

If the parts that complete an application have been filed in accordance with the first Paragraph, the original filing date shall apply, if

1. priority from an earlier application is claimed and the parts that constitute a completion are evident in their entirety from the earlier

application, and

2. the applicant demands it and he or she files a copy of the earlier application within the time prescribed in the first Paragraph.

It is not necessary to file a copy referred to in the third Paragraph, item 2, if the earlier application was filed at the Patent Authority.

#### **Article 9**

If the applicant so demands and pays a special fee, the Patent Authority shall, on the conditions determined by the Government, allow the application to become subject to such a novelty search by an International Searching Authority as referred to in Article 15.5 of the Patent Cooperation Treaty done at Washington on June 19, 1970.

#### **Article 10**

Patents for two or more mutually independent inventions may not be applied for in one and the same application.

#### **Article 11**

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

#### **Article 12**

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

#### **Article 13**

An application for a patent must not be amended in such a way that patent is claimed for something that did not appear from the application on the filing date.

#### **Article 14**

(Repealed by Act 2007:516).

#### **Article 15.**

If the applicant has not, in cases other than those referred to in Articles 8 c and 8 d, complied with the requirements regarding the application, or if the Patent Authority finds other obstacles to the approval of the application, the applicant shall be invited to submit, within a specified term, observations or make corrections. In this context, the Patent Authority may, however, without consulting the applicant, make such amendments as it considers necessary.

If the applicant fails, within the term prescribed, to submit observations or take measures to remedy any deficiency indicated, the application shall be dismissed. A notice to this effect shall be included in the invitation.

A dismissed application shall be reinstated, if the applicant, within four months from the expiry of the prescribed term, submits observations or takes measures to remedy any deficiency indicated and within the same term pays the prescribed reinstatement fee.

If the applicant does not pay the annual fee according to Articles 8, 41 and 42, the application shall be dismissed without any preceding invitation. An application which has been dismissed on this basis may not be reinstated.

#### **Article 16**

If, after the applicant has submitted his observations, there are still obstacles to approving the application, and the applicant has been given an opportunity to submit observations concerning the obstacle, the application shall be rejected, unless there are reasons for issuing a new invitation to the applicant.

#### **Article 17**

If anybody claims before the Patent Authority that the proper title to the invention belongs to him and not to the applicant, and if the case is considered doubtful, the Patent Authority may invite him to bring action before a Court within a certain time at the risk that the claim will be disregarded in the further examination of the patent application.

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

**Article 18**

If anybody proves before the Patent Authority that the proper title to the invention belongs to him and not to the applicant, the Patent Authority shall transfer the application to him, if he so demands. The transferee shall pay a new application fee.

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

**Article 19**

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

The applicant shall pay a prescribed grant fee within two months from the date of the notification and, if the patent claims are drawn up in English, file a translation into Swedish of the patent claims. If this is not done, the application shall be dismissed. The processing of a dismissed application shall be resumed if the applicant within four months from the expiry of the two months meets his obligations and, in addition, pays a prescribed fee for the resumption.

If a patent is sought by an inventor who has considerable difficulties in paying the grant fee, the Patent Authority may exempt him from this fee, if he files a written request to that effect within two months from the date of the notification. If the Patent Authority rejects the request by the inventor, a fee that is paid within two months thereafter shall be deemed to have been paid within the proper time limit.

**Article 20**

If the applicant has fulfilled the requirements of Article 19 and there is still no obstacle to a patent, the Patent Authority shall approve the application. The decision shall be announced.

When the decision to approve the patent application has been announced, a patent is granted. A patent that has been granted shall be recorded in the Patent Register kept by the Patent Authority. A Patent Certificate shall also be issued.

After the patent has been granted, the claims may not be amended so that the scope of the patent protection is extended.

## **Article 21**

As from the date when the patent is granted, a patent specification shall be kept available at the Patent Authority. The patent specification shall contain the description, the patent claims and an abstract as well as information concerning the patent holder and the inventor.

If the patent claims are drawn up in English, a translation of those into Swedish shall be attached to the patent specification. From the attachment shall be evident that the patent claims in English are the authentic ones.

## **Article 22**

The documents in the case shall be made publicly available to anyone as from the date when the patent is granted.

Eighteen months from the date when the patent application was filed or, where priority is claimed, the date from which priority is claimed, the documents shall, if they have not already been made available according to the first Paragraph, be made publicly available to anyone. If the application has been dismissed or rejected, the application shall, however, be made publicly available only if the applicant requests the application to be resumed, or lodges an appeal or files a request pursuant to Article 72 or 73.

At the request of the applicant, the documents shall be made publicly available earlier than what follows from the first and second Paragraphs.

If the patent claims are drawn up in English and a translation of those into Swedish has been filed in the case, it shall, when the documents are being made available in accordance with the second or third Paragraph, be indicated on the translation that the patent claims in their English version are the authentic ones.

When the documents become publicly available pursuant to the second or third Paragraph, this shall be announced. If a translation referred to in the fourth Paragraph is being filed after the announcement has been published, a specific announcement about the translation shall be published if the applicant pays a prescribed fee for this.

If a document contains a trade secret and if it does not concern an invention for which a patent is sought or has been granted, the Patent Authority may, upon demand and if there are special reasons for this, decide that the document shall not be delivered. If such a demand has been filed, the document may not be delivered until the demand has been refused through a decision that has gained legal force.

If a biological material has been deposited pursuant to Article 8 b, anyone has, subject to the limitations prescribed in this and the following Paragraphs, the right to obtain a sample of the material after the documents have been made publicly available according to the first, second or third Paragraph. This applies regardless of whether the patent has expired or has been invalidated. A sample may not be delivered to anyone who, pursuant to provisions in law or other statute, is not entitled to handle the deposited material. Furthermore, a sample may not be delivered to anyone whose handling of the sample may be assumed to involve an evident risk in view of the harmful properties of the material.

Until the patent has been granted or the patent application has been finally decided upon without having resulted in a patent, samples from a deposit may be delivered only to a special expert, if the applicant so requests. If the patent application is rejected or is withdrawn, the corresponding applies for a period of 20 years from the date when the application was filed. The Government prescribes the time within which the request can be made and who may be called as an expert by a person wishing to obtain a sample.

Anyone who wishes to obtain a sample shall make a written request in this respect to the Patent Authority and file a commitment with the contents prescribed the Government to prevent misuse of the sample. If a sample may be delivered only to a special expert, the commitment shall instead be filed by him or her.

#### **Article 23**

If the Patent Authority dismisses or rejects an application that has been made available to anyone, this decision shall be announced when it has gained legal force.

#### **Article 24**

Anyone other than the patent holder is entitled to file an opposition against a patent that has been granted. Any opposition shall be filed in writing at the Patent Authority within nine months from the date when the patent was granted.

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

If the patent has been granted with description, patent claims and abstract drawn up in English, the Patent Authority may invite the patent holder to file a translation of the description and the abstract into Swedish. The invitation shall be issued indicating that the Patent

Authority may otherwise have a translation made at the expense of the patent holder.

If the opposition is withdrawn, the opposition proceeding may nevertheless be completed if there are special reasons for this.

#### **Article 25**

The Patent Authority shall, following an opposition, revoke the patent if it

1. was granted despite the fact that the requirements under Articles 1 and 2 are not fulfilled,
2. relates to an invention that is not so clearly described that a person skilled in the art can carry it out with the guidance of the description, or
3. includes a matter that is not evident from the application as filed.

The Patent Authority shall reject the opposition if there is no obstacle pursuant to the first Paragraph to maintaining the patent.

If the patent holder has, in the course of the opposition proceedings, made such amendments that there are no obstacles pursuant to the first Paragraph to maintaining the patent in its amended form, the Patent Authority shall declare that the patent is maintained in its amended form. If the patent claims are drawn up in English, the patent may be maintained in its amended form only if the patent holder has filed a translation into Swedish of the patent claims in their amended version. The translation shall be attached to the decision and it shall be evident from the attachment that the patent claims in their English version are the authentic ones.

When the decision by the Patent Authority relating to an opposition has gained legal force, it shall be announced. If the decision involves that the patent is amended, a new patent specification shall be held available at the Patent Authority and a new Patent Certificate be issued.

#### **Article 26**

A final decision by the Patent Authority concerning an application for a patent may be appealed by the applicant if the decision is adverse to him or her. A final decision according to Article 8 c, third Paragraph, may be appealed by the applicant. A final decision relating to an opposition to a patent may be appealed by the patent holder and the opposing party if the decision is adverse to the party wishing to appeal. If the party that has filed an opposition withdraws its appeal, it may nevertheless be considered if there are special reasons for



this.

A decision whereby a request for reinstatement according to Article 15, third Paragraph, or Article 19, second Paragraph, or a request for a transfer according to Article 18, has been sustained may be appealed by the applicant. A decision by which a request for transfer according to Article 18 has been rejected, may be appealed by the party that made the request.

A decision by which a demand for an order under Article 22, sixth Paragraph, has been rejected may be appealed by the person who made the demand.

Provisions concerning appeal against decisions according to Articles 42, 72 or 73, are included in Article 75.

#### **Article 27**

Appeals under Article 26, are lodged at the Court of Patent Appeals within two months from the date of the decision.

A final decision by the Court of Patent Appeals may be appealed to the Supreme Administrative Court within two months from the date of the decision. The appeal may not relate to patent claims other than those that have been considered in the decision appealed. In other respects, the provisions in Articles 35 to 37 of the Act on Administrative Procedures concerning appeals against decisions by the Administrative Court of Appeal shall apply. The decision by the Court of Patent Appeals shall contain information to the effect that a special review permit is required for consideration of appeals by the Supreme Administrative Court and the grounds on which such permit is granted. The provisions of Article 22, sixth Paragraph, shall apply to documents that are filed at the Court of Patent Appeals or the Supreme Administrative Court.

## **Chapter 3 International Patent Applications**

### **Article 28**

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

An international patent application shall be filed at a Patent Authority or an International Organisation that is, according to the Patent Cooperation Treaty and its Regulations, authorised to receive such applications (Receiving Authority). The Swedish Patent Authority shall be Receiving Authority in accordance with what the Government prescribes. The applicant shall pay the prescribed fee for an international patent application filed at the Swedish Patent Authority. The provisions of Articles 29 to 38 apply to international patent applications designating Sweden. If, however, a European patent for Sweden is sought through the application, Chapter 11 shall apply.

### **Article 29**

An international patent application for which the Receiving Authority has accorded an international filing date, shall in Sweden have the same effect as a Swedish patent application with the same filing date. The provisions of Article 2, second Paragraph, second sentence, shall, however, apply only if the application has been pursued in accordance with Article 31.

### **Article 30**

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

### **Article 31**

If the applicant wants to pursue an international patent application in Sweden, the applicant shall within 31 months from the international filing date, or, where priority is claimed, the date from which priority is claimed, file, at the Patent Authority, a translation into Swedish or English of the international patent application to the extent prescribed by the Government or, if the application is drawn up in Swedish or English, a copy of the application. The applicant shall within the same period, pay a fee to the Patent Authority.

If the applicant has paid the fee within the period prescribed in the first Paragraph, the translation or the copy required may be filed

within an additional respite of two months, provided that an additional fee is paid within the latter respite.

If the applicant does not comply with the provisions in this Article, the application shall be deemed to be withdrawn as far as Sweden is concerned.

#### **Article 32**

(Repealed by Act 2007:516).

#### **Article 33**

If an international patent application has been pursued according to Article 31, the provisions in Chapter 2 concerning the application and its processing shall apply unless otherwise provided in this Article or in Articles 34 to 37. The application may only upon a request by the applicant be taken up for consideration before the expiry of the respite that applies according to Article 31, first Paragraph.

An invitation according to Article 12 may not be issued before the point in time when the Patent Authority has the right to commence the consideration of the application.

The provisions of Article 22, second and third Paragraphs, become applicable already before the application has been pursued as soon as the applicant has met his obligation under Article 31 to file a translation of the application or, if the application is drawn up in Swedish or English, as soon as the applicant has filed a copy of it at the Patent Authority.

In respect of an international patent application shall, for the purposes of the application of Articles 48, 56 and 60, the provisions included there concerning the making available under Article 22 of the documents in the application case, refer instead to the making available of the documents under Article 22 with application of the third Paragraph.

If a patent application fulfils the requirements as regards form and contents that are prescribed in the Patent Cooperation Treaty and its Regulations, it shall be accepted in these respects.

#### **Article 34**

In respect of an international patent application, the Patent Authority may not grant a patent or decide to reject it before the expiry of the time limit prescribed by the Government, unless the applicant agrees to an earlier decision concerning the application.

**Article 35**

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

**Article 36**

If a part of an international patent application has not been the subject of an international search or an international preliminary patentability examination because the application was found to encompass mutually independent inventions and because the applicant did not pay, within the prescribed time limit, the additional fee pursuant to the Patent Cooperation Treaty, the Patent Authority shall consider if the finding was correct. If the Patent Authority concludes that the finding was correct, the part of the application that was not the subject of such a search or such an examination shall be considered to be withdrawn at the Patent Authority if the applicant does not pay the prescribed fee within two months from the point in time when the Patent Authority sent a notification to him about its decision. If the Patent Authority concludes that the finding was not correct, the Patent Authority shall proceed with the examination of the application in its entirety.

A decision pursuant to the first Paragraph, whereby the Patent Authority has concluded that the patent application encompasses mutually independent inventions, may be appealed by the applicant. The provisions of Article 27, first and second Paragraphs, shall apply.

If the Court finds the decision by the Patent Authority to be correct, the respite for the payment of such a fee as referred to in the first Paragraph, second sentence, shall be computed from the date when the Patent Authority sent to the applicant a notification of the decision of the Court that has gained legal force.

**Article 37**

If a part of an international patent application has not been the subject of an international preliminary patentability examination because the applicant has restricted the patent claims after having been invited by the Authority entrusted with such an examination to either restrict the claims or pay additional fees, the part of the

application that has not been examined shall be deemed to be withdrawn at the Patent Authority unless the applicant pays the prescribed fee to the Authority within two months after the Authority sent him a notification about what thus applies.

#### **Article 38**

If the Receiving Authority has refused to accord an international filing date for an international patent application or has declared that the application shall be deemed to be withdrawn or that the demand that the application shall designate Sweden shall be deemed to be withdrawn, the Patent Authority shall, at the request of the applicant, consider whether this decision was correct. The same shall apply in respect of a decision by the International Bureau that the application shall be deemed to be withdrawn.

A request for review pursuant to the first Paragraph shall be filed with the International Bureau within the respite prescribed by the Government. Within the same respite, the applicant shall file at the Patent Authority a translation of the application to the extent prescribed by the Government and pay the prescribed application fee. If the Patent Authority concludes that the decision of the Receiving Authority or the International Bureau was not correct, the Patent Authority shall process the application pursuant to Chapter 2. If an international filing date has not been accorded by the Receiving Authority, the application shall be deemed to have been filed on the date that the Patent Authority deems should have been accorded as the international filing date. If the application fulfils the requirements as to form and content prescribed in the Patent Cooperation Treaty and its Regulations, it shall be accepted in these respects.

The provision in Article 2, second Paragraph, item 2, shall apply to an application which has been taken up for processing pursuant to the third Paragraph, if the application becomes publicly available pursuant to Article 22.

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

### **Article 39**

The extent of the patent protection is determined by the patent claims. For the understanding of the patent claims, guidance may be sought from the description.

### **Article 40**

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

For a patent a prescribed annual fee shall be paid for each fee year commencing after the grant. If the patent has been granted before annual fees for the patent application have commenced to become due under Article 41, the patent holder shall, however, when the annual fee for the patent becomes due for the first time, pay also the annual fees for the fee years commencing before the grant.

Provisions concerning supplementary protection are included in Chapter 13.

## **Chapter 4a Limitation of Patents, etc.**

### **Article 40a**

A patent holder may file a request at the Patent Authority to the effect that

1. one or more patent claims and, where this is necessary, the description be amended so that the extent of the patent protection be limited (patent limitation), or
2. the patent be revoked.

If the patent claims are drawn up in English, the patent holder shall, in connection with a request under the first Paragraph, item 1, file a translation into Swedish of the patent claims in the version to which the request refers.

A request pursuant to the first Paragraph shall be rejected if, at the time of the request, an opposition proceeding pursuant to Article 24 or pursuant to Article 99 of the Convention on the Granting of European Patents, done at Munich on October 5, 1973, (the European Patent Convention) or a case for invalidation pursuant to Article 52 relating to the patent are in progress. If the patent holder has requested, or requests, that the patent be limited or revoked pursuant to Article 105 a of the European Patent Convention, any request pursuant to the first Paragraph shall be declared in abeyance until the European Patent Office has issued a final decision in the matter.

A request pursuant to the first Paragraph must not be approved without the consent of the right-owners concerned as long as the patent is put under legal seizure, or sequestered or put on hold for ensuring payment, or a dispute on the transfer of the patent is pending in a Court.

The patent holder shall pay a special fee for a request pursuant to the first Paragraph.

### **Article 40b**

If the patent holder has not complied with the provisions of Article 40 a or if a request for the limitation of a patent is not in conformity with the provisions of Article 52, first Paragraph, items 2 to 4, on invalidity, the patent holder shall be invited to submit a correction within a specified period of time.

If the patent holder does not reply or if the request cannot be approved even after the patent holder has submitted a statement, the request shall be rejected, if

1. the patent holder has been given an opportunity to submit a statement concerning the obstacle, and

2. there is no reason to issue a new invitation to the patent holder.

**Article 40c**

If the Patent Authority finds that there are no obstacles to the approval of a request pursuant to Article 40 a, the patent shall be limited or revoked in conformity with the request. A translation referred to in Article 40 a, second Paragraph, shall be attached to the decision and it shall be evident from the attachment that patent claims in their English version are the authentic ones. The Patent Authority shall announce the decision. If the patent has been limited, the Patent Authority shall issue a new Patent Certificate and make a new patent document available.

The decision by the Patent Authority shall have effect from the date of the filing of the patent application.

**Article 40d**

In cases relating to the infringement of a patent or to the revocation of a patent, the patent holder has an obligation to inform the Court about the fact that a request for a limitation or revocation of the patent has been filed.



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

### **Article 41**

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

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

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

### **Article 42**

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

If a request for respite or for an extension of the respite is refused, a fee that is paid within two months thereafter shall be considered to have been paid in time.

Annual fees, for the payment of which a respite has been granted under the first Paragraph, may be paid together with the same increase as referred to in Article 41, third Paragraph, within six months after the point in time until which a respite has been obtained.

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

### **Article 43**

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

### **Article 44.**

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

If it has been proved that a license recorded in the Register has ceased to be valid, the recording of the license shall be cancelled. The provisions of the first and second Paragraphs shall apply, *mutatis mutandis*, to compulsory licenses and rights referred to in Article 53, second Paragraph.

In lawsuits and other legal cases concerning a patent, the party shall be deemed to be the patent holder who has last been recorded in the Register of Patents in such capacity.

### **Article 45**

A compulsory license for the use of an invention in Sweden may be granted if

1. three years have passed from the granting of the patent and four years from the filing of the patent application,
2. the invention is not used to a reasonable extent in Sweden, and
3. there is no acceptable reason for the non-use of the invention.

For the purposes of the application of the first Paragraph, item 2, importation of the invention to Sweden from a State within the European Economic Area or a State or a territory that is party to the Agreement Establishing the World Trade Organization (WTO) is equal to the use of the invention.

### **Article 46**

A holder of a patent for an invention the exploitation of which is depending on a patent that belongs to someone else may be granted a compulsory license to exploit the invention protected by the other patent. Such a license may be granted only if the applicant proves that the first-mentioned invention constitutes an important technical progress of considerable economic interest compared with the other invention.

If a compulsory license is granted pursuant to the first Paragraph, the holder of the patent for which a compulsory license has been granted is entitled to obtain, on reasonable conditions, a compulsory license (cross-license) to exploit the other invention.

#### **Article 46a**

A plant breeder who cannot obtain or exploit a plant variety right or a Community plant variety right without infringing a patent granted earlier, may obtain a compulsory license to exploit the invention that is protected by the patent where such a license is necessary for the plant variety to be exploited. Such a license may be granted only if the applicant proves that the plant variety constitutes an important technical progress of considerable economic interest compared with the invention.

Of a patent holder obtains a compulsory license in respect of a plant variety right or a Community plant variety right, the holder of the plant variety right is entitled to obtain, on reasonable conditions, a compulsory license (cross-license) to exploit the invention of the patent holder.

Provisions on the possibility for the holder of a patent on a biotechnical invention to obtain, under certain conditions, a compulsory license to exploit a protected plant variety are contained in Chapter 7, Article 3 a, of the Act on the Protection of Plant Variety Rights and, in so far as concerns the Community plant variety rights, in Article 29 of the Council Regulation (EEC) No 2100/94 of 27 July 1994 on the Community Plant Variety Rights.

#### **Article 47**

If a public interest of exceptional importance so requires, anyone who desires to make commercial use of an invention for which another party holds a patent may obtain a compulsory license to that effect.

#### **Article 48**

Any person who in this country was commercially exploiting an invention that is the subject of a patent application at the time when the application documents were made available pursuant to Article 22, may, if the application results in a patent, obtain a compulsory license for the exploitation if particularly strong reasons exist and he had no knowledge of the application and had not reasonably been able to obtain such knowledge. Under corresponding conditions such a right shall also be granted to anyone who had made substantial preparations

for commercial exploitation of the invention in this country. Such a compulsory license may also apply for a period of time before the patent was granted.

#### **Article 49**

A compulsory license may only be granted to a party that can be assumed to exploit the invention in an acceptable manner and in accordance with the license. The applicant must also prove that he or she has unsuccessfully turned to the patent holder in order to obtain a contractual license on reasonable conditions.

A compulsory license does not prevent the patent holder from exploiting the invention himself or to grant licenses. A compulsory license may be assigned to someone else only together with a business where it is exploited or was intended to be exploited. In respect of compulsory licenses referred to in Article 46, first Paragraph, and Article 46a, first Paragraph, also applies that the license may be assigned only together with the patent or the plant variety right to which the license applies.

#### **Article 50**

A compulsory license is granted by a Court, which also decides to what extent the invention may be exploited and determines the remuneration and other terms for the license. When substantially changed circumstances call for it, the Court may, upon demand, revoke the license or establish new conditions for it.

## **Chapter 7 Lapse of Patents, etc.**

### **Article 51**

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

### **Article 52**

Pursuant to a claim to this effect, the Court shall invalidate a patent if

1. it has been granted despite the fact that the requirements under Articles 1 and 2 are not fulfilled,
2. it relates to an invention which is not described in a way sufficiently clear for a person skilled in the art to carry out the invention with the guidance thereof,
3. it contains something that did not appear in the application on the filing date, or
4. the scope of the patent protection has been expanded after the grant of the patent.

If only a certain part of a patent is invalid, the scope of the patent protection shall be limited correspondingly, through an amendment of the patent claims, if

1. the patent holder claims it,
2. this is in conformity with the first Paragraph, items 2 to 4, and
3. the patent holder has, if the patent claims are drawn up in English, filed a translation into Swedish of the patent claims in their amended version.

A translation referred to in the second Paragraph, item 3, shall be attached to the judgement and it shall be evident from the attachment that the patent claims in their English versions are the authentic ones.

A patent must not be invalidated only on the ground that the party that has been granted the patent is entitled only to a certain part of it.

Except in cases provided for in the sixth Paragraph, a court action may be brought by anyone who suffers damage from the patent and, where this is called for in the public interest, by a Public Authority designated by the Government.

An action based on the allegation that the patent has been granted to a party other than the one entitled to the patent under Article 1 may only be brought by the party that claims to be entitled to it. The

action shall be brought within one year after the party claiming to be entitled to such a right obtained knowledge about the grant of the patent and about other facts on which the action is based. If the patent holder was in good faith when the patent was granted or when it was transferred to him, the action may, however, be brought no later than three years from the grant of the patent.

#### **Article 53**

If a patent has been granted for a party other than the one that is entitled to the patent according to Article 1, the Court shall, upon an action by the party that is entitled to the patent, transfer it to him or her. The provisions of Article 52, sixth Paragraph, shall apply with respect to the time within which an action shall be brought.

If the party that is deprived of the patent has, in good faith, commenced the exploitation of the invention commercially in Sweden or made substantial preparations therefore, he or she shall be entitled, against a reasonable remuneration and on other reasonable terms, to continue the commenced exploitation or implement the exploitation as planned, while retaining its general character. Such a right has, under corresponding conditions, also anyone who holds a license which is recorded in the Register of Patents.

A right referred to in the second Paragraph may be transferred to someone else only together with the business in which the right has been exploited or was intended to be exploited.

#### **Article 54**

If the patent holder renounces the patent in writing to the Patent Authority, the Authority shall declare that the patent has been terminated in its entirety.

If the patent is seized for debt, sequestered or put as a guarantee for payment, or if there is a litigation pending at a Court concerning the transfer of the patent, the patent must not be declared terminated as long as the seizure, the sequestration or putting on hold for ensuring payment is still valid, or the dispute has not been finally decided.

#### **Article 55**

When a patent has become invalid or has been declared terminated or, through a judgement that has gained legal force, has been declared invalid or amended, or transferred, the Patent Authority shall publish an announcement about this fact.

If the patent has been amended through a judgement that has obtained legal force, a new patent document shall be made available at the Patent Authority and a new Patent Certificate be issued.

## **Chapter 8 Obligation to Provide Information**

### **Article 56**

If a patent applicant invokes his or her application against another party before the documents in the case have been made available to the public pursuant to Article 22, the applicant is obliged to consent, upon request, to give the other party access to the documents. If the patent application includes a deposit of biological material referred to in Article 8 b, the consent shall also include the right to obtain a sample of the material. The provisions of Article 22, seventh Paragraph, third and fourth sentences, and eighth and ninth Paragraphs apply when a party wants to obtain a sample on the basis of such consent.

Anyone who indicates either by turning himself directly to another party, or in an advertisement, or by inscription on a product or its packaging, or in any other way, that a patent has been applied for, or granted, without at the same time indicating the number of the application or of the patent, shall be obliged to provide, upon request, the said information without delay. If it has not been expressly stated that a patent has been applied for, or granted, but the circumstances create the impression that such is the case, then, upon request, information shall be given without delay on whether a patent has been applied for or granted.



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

### **Article 57**

If anyone infringes the exclusive right conferred by a patent (patent infringement) and if the act is committed wilfully or with gross negligence, he or she shall be sentenced to fines or imprisonment for not more than two years. Anyone who has violated an injunction issued under penalty of a fine pursuant to Article 57 b, may not be held liable under criminal law for the infringement covered by the injunction.

Attempts to commit acts implying violations referred to in the first Paragraph, and preparations for such acts, are punishable pursuant to Chapter 23 of the Criminal Code.

The Public Prosecutor may bring an action for violations referred to in the first or second Paragraph only if the injured party files a complaint and a prosecution is called for in the public interest.

### **Article 57a**

Property in relation to which a violation has occurred pursuant to Article 57 shall be forfeited if this is not obviously unreasonable. Instead of the property itself its value may be declared forfeited. Also profits from such a violation shall be declared forfeited if this is not obviously unreasonable. The same applies to what someone received as a compensation for costs related to such a violation, or the value of what has been received, if the reception of it constitutes a violation pursuant to Article 57.

Property that has been used as an implement in connection with a violation under Article 57 may be declared forfeited, where this needed in order to prevent violations or where there are otherwise special reasons. The same applies to property that has been intended to be used as an implement in connection with a violation under Article 57, if the violation has been completed or if the action has constituted a punishable attempt or a punishable preparation. Instead of the property itself, its value may be forfeited.

### **Article 57b**

Upon a request by the patent holder or by a party that, on the basis of a license, has the right to exploit the invention, the Court may issue an injunction prohibiting, under penalty of a fine, a party that commits, or contributes to, a patent infringement to continue that act.

If the plaintiff shows a probable cause that an act constituting an infringement, or a contribution thereto, takes place, and if it can reasonably be expected that the defendant, through the continuation of the act, or the contribution thereto, diminishes the value of the exclusive right in the patent, the Court may render an injunction, under penalty of a fine, for the time until the case has been finally adjudicated or otherwise is decided. No injunction may be rendered before the defendant has been given an opportunity to respond, unless a delay would entail a risk for damage.

The provisions in the first and second Paragraphs apply also to acts constituting attempts, and to preparatory acts, relating to infringements.

An injunction mentioned in the second Paragraph may be issued only if the plaintiff deposits a security at the Court for the damage that may be caused to the defendant. If the plaintiff is not capable of depositing such a security, the Court may liberate him from it. As regards the type of security, the provisions of Chapter 2, Article 25, of the Enforcement Code shall apply. The security shall be examined by the Court unless the defendant has accepted it.

When the case is adjudicated, the Court shall decide whether a prohibition issued pursuant to the second Paragraph shall continue to apply.

As regards appeals against decisions under the second or fourth Paragraph and as regards the proceedings in higher Courts, the provisions on appeal against decisions in Chapter 15 of the Code of Judicial Procedure apply.

An action for the imposition of a fine may be brought by the party that has applied for the injunction and shall be processed in accordance with the provisions in the Code of Judicial Procedure relating to actions in cases where no higher penalty than fines is prescribed. In connection with such an imposition, an action may be brought for a new injunction to be rendered under penalty of a fine.

#### **Article 57c**

If the applicant shows a probable cause that someone has committed a patent infringement, the Court may order, under penalty of a fine, one or several of the parties referred to in the second Paragraph to provide information to the applicant about the origin and distribution networks for the goods or services in respect of which the infringement has been committed (order to provide information). Such an order may be issued upon a claim by the holder of the patent or by a party that,

on the basis of a license, has the right to exploit the invention. Such an order may be issued only if it can be assumed that the information would facilitate the inquiry into an infringement relating to the goods or services.

The obligation to provide information relates to any party that

1. has committed, or contributed to, the infringement,
2. has on a commercial scale been exploiting goods that the infringement concerns,
3. has on a commercial scale been exploiting a service that the infringement concerns,
4. has on a commercial scale made available an electronic communication service or another service that has been used in connection with the infringement, or
5. has been indicated by a party referred to in items 2 to 4 as being involved in the production or distribution of the goods or the making available of the service that the infringement concerns.

The information on the origin or distribution network of goods or services may, in particular, include

1. the names and addresses of producers, distributors, suppliers and others who have previously held the goods or made available the service.
2. the names and addresses of intended wholesalers and retailers, and
3. information about how much has been produced, delivered, received or ordered and the price obtained for the goods or services.

The provisions in the first to third Paragraphs apply also to acts constituting attempts, and to preparatory acts, relating to infringements.

#### **Article 57d**

An order to provide information may be issued only if the reasons speaking in favour of the measure outweigh the inconvenience or other harm that the measure would cause to the party affected by it or any other opposite interest.

The obligation to provide information pursuant to Article 57 c does not include information the revelation of which would disclose that the provider of the information or any person closely related to him or her as referred to in Chapter 36, Article 3, of the Code of Judicial Procedure has committed a criminal offence.

The Act on Personal Data contains provisions that limit the use that can be made of personal data received.

**Article 57e**

A decision on an order to provide information may be rendered by a Court referred to in Article 65.

If the claim for an order to provide information is directed against a party that is the applicant's opposite party in a case related to an infringement, the provisions on court procedures for that case shall apply. Decisions on orders to provide information may be appealed separately.

If the claim for an order to provide information is directed against a party other than the one referred to in the second Paragraph, the provisions in the Act on Court Matters apply. For the purpose of consideration of the issue also an oral hearing may be held pursuant to Chapter 37 of the Code of Judicial Procedure. The Court may decide that each party shall bear its own litigation costs.

An action for the imposition of a fine may be brought by the party that has applied for the order and shall be processed in accordance with the provisions in the Code of Judicial Procedure on actions in criminal cases for which no higher penalty than fines is prescribed. In connection with such an action, an action may be brought for a new order to provide information.

**Article 57f**

Anyone who, pursuant to Article 57 c, second Paragraph, items 2 to 5, has been ordered to provide information pursuant to the first Paragraph of the same Article, has a right to a reasonable compensation for costs and inconvenience caused. The compensation shall be paid by the party that has applied for the order to provide information.

Anyone who makes available an electronic communication service and who has, pursuant to an order to provide information, delivered information referred to in Chapter 6, Article 20, of the Act on Electronic Communications, shall send a written notice on this to the person whom the information concerns not earlier than one month and not later than three months from the delivery of the information. Costs for the notice shall be compensated in accordance with the first Paragraph.

**Article 57g**

Notwithstanding the prohibition in Article 21 of the Act on Personal Data, personal data on offences that constitute violations pursuant to Article 57 may be processed if this is necessary in order for a legal claim to be established, asserted or defended.

**Article 57h**

Upon a claim by the plaintiff, the Court may, in infringement cases, order the party that has committed, or contributed to, the infringement to pay a pecuniary compensation for appropriate measures to disseminate information about the judgement in the case.

The provisions in the first Paragraph apply also to acts constituting attempts, and preparatory acts, relating to infringements.

**Article 58**

Anyone who willfully or with negligence commits a patent infringement shall pay a reasonable compensation for the exploitation of the invention and compensation for the further damage that the infringement has caused. When the amount of the compensation is decided, particular consideration shall be given to

1. lost profits,
2. profits that has made by the party that committed the infringement,
3. damage caused to the reputation of the invention,
4. moral damage, and
5. the interest of the patent holder that infringements are not committed.

Anyone who without intent or negligence commits a patent infringement shall pay a compensation for the exploitation of the invention if and to the extent that this is reasonable.

An action for compensation for a patent infringement may concern only the damage caused during the last five years before the action was brought. If no action is brought within that time period, the right to compensation is lost.

**Article 59**

Upon a claim by a party that has suffered a patent infringement, the Court may, in so far as is reasonable, decide that a patent-protected product that has been manufactured without the consent of the patent holder shall be recalled from the channels of commerce, changed, taken into custody for the remainder of the patent term or be destroyed or that some other measure shall be taken in respect of it. The same applies to implements that have been, or have been intended to be, used in connection with the infringement.

Property referred to in the first Paragraph may be seized, if it may reasonably be assumed that a criminal violation pursuant to Article 57 has been committed. In respect of such seizure, the provisions on

seizure in criminal cases in general shall apply.

Notwithstanding the provisions in the first Paragraph, the Court may, if there are exceptional reasons, pursuant to a claim, decide that a proprietor of property referred to in the first Paragraph may have disposal of the property for the remainder of the patent term, or part of it, against a reasonable compensation and on other reasonable conditions. Such a decision may be rendered only if the proprietor has acted in good faith.

The provisions of the first to third Paragraphs apply also to acts constituting attempts, and to preparatory acts, relating to an infringement.

A decision on a measure pursuant to the first Paragraph must not imply that the party that has suffered a patent infringement shall have to pay compensation to the party against which the measure is directed. Any measures pursuant to the first Paragraph shall be paid for by the defendant where there are no specific reasons against it.

No decision referred to in this Article shall be issued, if forfeiture or a measure for the prevention of wrongful acts shall be decided pursuant to Article 57 a or the Criminal Code.

#### **Article 59a**

Where it can reasonably be assumed that someone has committed, or contributed to, an infringement, the Court may, for the purpose of preserving evidence relating to the infringement, order that an investigation be undertaken in respect of that party in order to search for objects or documents that can be assumed to be of importance for the inquiry into the infringement (infringement investigation).

An order for an infringement investigation may be issued only where the reasons speaking in favour of the measure outweigh the inconvenience or other harm that the measure would cause to the party against which it is directed or to any other opposite interest.

The provisions in the first and second Paragraphs apply also to acts constituting attempts, and to preparatory acts, relating to an infringement.

#### **Article 59b**

An order for an infringement investigation is issued by the Court referred to in Article 65.

A matter relating to an infringement investigation may be taken up for consideration only upon a claim by the patent holder or anyone who, on the basis of a license, has a right to exploit the invention. Where

legal proceedings have not yet been commenced, the claim shall be submitted in writing.

The opposite party shall be given an opportunity to respond before an order for an investigation is issued. Where a delay would entail a risk that objects or documents of importance for the inquiry into the infringement would be removed, destroyed or distorted, the Court may, however, immediately issue an order to be valid until otherwise decided. In other respects, any matter relating to an infringement investigation which arises before legal proceedings have been commenced shall be processed in the same way as if the matter had arisen in the course of legal proceedings.

#### **Article 59c**

An order for an infringement investigation may be issued only where the applicant deposits a security at the Court for the injury that may be caused to the opposite party. Where the applicant is not capable of depositing a security, the Court may liberate him from it. As regards the type of the security, the provisions of Chapter 2, Article 25, of the Enforcement Code shall apply. The security shall be examined by the Court, unless the opposite party has accepted it.

As regards appeals against the decision by the Court relating to an infringement investigation proceeding and as regards the proceedings in higher Courts the provisions concerning appeal against decisions prescribed in Chapter 15 of the Code of Judicial Procedure apply.

#### **Article 59d**

An order for an infringement investigation shall contain information about

1. the purpose of the investigation,
2. the objects and documents that may be searched for, and
3. the premises that may be searched.

Where necessary, the Court shall set also other conditions for the execution of the order.

#### **Article 59e**

An order for an infringement investigation is immediately enforceable. If an application for its execution has not been filed within one month from the order, it becomes invalid.

If the applicant does not, within one month from the conclusion of the execution, file an action or commence in some other manner a proceeding relating to the matter, any measure that has been undertaken in the

context of the execution of the infringement investigation shall be invalidated to the extent possible. The same applies where an order for an infringement investigation is invalidated after the execution has been concluded.

**Article 59f**

An order for an infringement investigation is executed by the Local Enforcement Authority in accordance with the conditions prescribed by the Court and in applying Chapters 1 to 3, Chapter 17, Articles 1 to 5, and Chapter 18, of the Enforcement Code. The applicant's opposite party shall be informed about the execution only if the order for an infringement investigation has been issued after hearing the opposite party. The Authority has the right to take photographs and to make video and sound recordings of such objects for which it is authorised to search. The Authority also has the right to make copies of, and extracts from, such documents for which it is authorised to search. An infringement investigation must not concern written documents referred in Chapter 27, Article 2, of the Code of Judicial Procedure.

**Article 59g**

The opposite party has the right to summon an attorney when an order for infringement investigation is to be executed. The execution must not commence before the attorney has arrived. This does not, however, apply if

1. the investigation is thereby unnecessarily delayed, or
2. there is otherwise a risk that the purpose of the measure will not be achieved.

In the course of the execution, the Enforcement Authority is authorised to engage, as necessary, the services of an expert.

The Authority may permit the applicant or a representative of the applicant to attend the investigation in order to provide information. If such a permission is granted, the Authority shall see to it that the applicant or the representative is not being informed about the findings at the investigation more than can be justified by the execution.

**Article 59h**

Photographs and video and sound recordings of objects as well as copies of, and extracts from, documents shall be listed and shall be held available for the applicant and the opposite party.



## **Article 60**

If someone commercially exploits an invention for which a patent is sought after the documents in the application case have been made available pursuant to Article 22, the provisions on patent infringement shall apply only to the extent that the application results in a patent. For the period before the patent was granted pursuant to Article 20, the patent protection extends, however, only to what is apparent both from the patent claims as worded when the application became available to the public and from the patent claims according to the patent. No punishment shall be imposed, no forfeiture must take place and compensation for damages resulting from the exploitation that took place before the patent was granted may be adjudicated only pursuant to Article 58, second Paragraph.

If the patent claims are drawn up in English, the provisions of the first Paragraph apply only if a translation of the patent claims into Swedish is available in the application case and, if the translation has been filed after an announcement under Article 22, fifth Paragraph, first sentence, has occurred, the Patent Authority has issued a specific announcement relating to the translation.

The provisions of Article 58, third Paragraph, shall not apply if the action for compensation was brought at the latest one year after the term for opposition has expired or, if an opposition has been filed, at the latest one year after the Patent Authority decided that the patent was to be maintained.

## **Article 61**

If a patent has been revoked or declared invalid by a decision or a judgement that has gained legal force, the Court may not adjudicate a punishment, decide on a seizure, issue a prohibition under penalty of a fine, impose a fine or a compensation or decide on any other measure pursuant to Articles 57 to 60.

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

If a patent infringement action and a patent invalidity action are brought in the same court proceeding and if it would be suitable with regard to the inquiry that the issue of patent infringement be dealt with separately, a separate judgement may, at the request of one of

the parties, passed on this issue. If a separate judgement is passed, the Court may decide that the case relating to the invalidity shall be held in abeyance until the judgement has gained legal force.

#### **Article 62**

Anyone who wilfully or with negligence which is not of a minor nature omits to carry out what is required by him under Article 56, shall be sentenced by fines.

Such a penalty shall also be imposed on a party that, in cases referred to in the same Article, wilfully or with negligence which is not of a minor nature provides erroneous information, unless punishment for such acts is provided for in the Penal Code.

Anyone who wilfully or with negligence omits to carry out his obligations under Article 56 or, in cases referred to there, provides erroneous information shall pay a compensation for the injury caused. If the negligence is of a minor nature, the compensation may be adjusted accordingly.

Prosecution actions for offenses referred to in the first and second Paragraphs may be brought by the Public Prosecutor only if the injured party has filed a complaint and a prosecution is called for in the public interest.

#### **Article 63**

A patent holder or a party that on the basis of a license is authorised to exploit the invention, may bring an action for a declaratory judgement to establish whether he enjoys protection against another party on the basis of the patent, if there is uncertainty in this respect and this is prejudicial to him.

A party that carries out or intends to carry out an activity may, on the same conditions, bring an action against the patent holder to establish whether a specific patent constitutes an obstacle to the said activity.

If it is alleged in the cases mentioned in the first Paragraph that the patent is invalid, the provisions of Article 61, second Paragraph, shall apply, *mutatis mutandis*.

#### **Article 64**

Anyone who desires to bring an action for the invalidation of a patent, for transfer of a patent or for the grant of a compulsory license shall report this to the Patent Authority and shall notify anyone who, according to the Register of Patents, holds a license in, or a pledge

of, the patent. If a licensee desires to bring an action for a patent infringement or for an establishment under Article 63, first Paragraph, he shall notify the patent holder about this fact. The same applies if a holder of a pledge desires to bring an action for patent infringement.

The duty to provide information provided for in the first Paragraph shall be deemed to have been fulfilled when the information has been sent in a prepaid registered letter to the address recorded in the Register of Patents.

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

#### **Article 65**

The District Court of Stockholm shall have exclusive jurisdiction in litigations relating to

1. the proper title to an invention for which a patent is sought,
2. the invalidation or transfer of a patent
3. the grant of compulsory licenses, the establishment of new conditions for, or the revocation of, such licenses or rights referred to in Article 53, second Paragraph
4. patent infringements
5. establishments under Article 63, or
6. the adjudication of compensation under Article 78.

#### **Article 66**

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

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

**Article 67**

In cases where technologically qualified members of the District Court have participated in the decision, the Court of Appeal is competent with three members proficient in law and two technologically qualified members. However, if three members proficient in law have participated in the decision of the District Court, at least four members proficient in law shall participate in the decisions of the Court of Appeal. More than five members proficient in law and three technologically qualified members may not sit on the Court.

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

In cases concerning review permits the Court of Appeal shall include three members proficient in law. One technologically qualified member may, however, serve on the Court instead of one of the members proficient in law.

**Article 68**

The Government or an Authority designated by the Government shall appoint, for a specified period of time, the persons who shall serve as technologically qualified members of the District Court and of the Court of Appeal.

Where a technologically qualified member participates in the considerations of a case and a circumstance occurs resulting in the expiry of the appointment, the appointment shall nevertheless be valid in the case in progress.

For each particular case the President of the Court shall select, from among those appointed, the members that shall serve on the Court.

**Article 68a**

In a civil litigation pursuant to Article 65, the Court may, where a complete translation into Swedish of the patent document is not available at the Patent Authority, invite the patent holder or any other party that brings an action on the basis of a right derived from the patent holder to file a translation into Swedish of the patent document. Where the party thus invited is the plaintiff in the case, the invitation shall be issued indicating that the action may otherwise be dismissed. If the invited party is the defendant in the case, the invitation shall instead be issued indicating that the Court will otherwise prepare a translation of the patent document at the expense of the party.

**Article 69**

In cases pursuant to Article 65, the Court shall obtain an opinion from the Court of Patent Appeals, if this is considered necessary.

**Article 70**

A copy of the judgement or final decision in cases referred to in Article 65 shall be transmitted to the Patent Authority.

## **Chapter 10 Special Provisions.**

### **Article 71**

A patent holder who does not have his domicile in this country shall have a representative with residence here who is empowered to receive for him service of writs of summons, invitations and other documents in legal cases and matters concerning the patent, with the exception of writs of summons in criminal cases and orders for the party to appear personally before the Court. The representative shall be communicated to the Register of Patents and recorded there.

If the patent holder has not communicated a representative as referred to in the first Paragraph, the service may instead be carried out by sending the document to be served on him in a prepaid letter to his address as recorded in the Register of Patents. If there is no complete address recorded in the Register, the service may be carried out by making the document available at the Patent Authority and by announcing the said service and the essential contents of the document in a publication determined by the Government. The service shall be deemed to have been performed when the actions mentioned above have been carried out.

The Government may, on condition of reciprocity, prescribe that the provisions in the first and second Paragraphs shall not apply in relation to a patent holder who is domiciled in a specified foreign State or who has a representative in that foreign State who is communicated to the Register of Patents in this country and who is empowered in the manner prescribed in the first Paragraph.

### **Article 72**

If the applicant or the patent holder has, despite having observed all due care required by the circumstances, suffered a loss of rights because he or she has not performed an act at the Patent Authority within the time limit prescribed in this Act or under the authority of this Act and then he or she performs the act within two months from the removal of the cause of the non-compliance, but at the latest within one year from the expiry of the respite, the Patent Authority shall declare the act to have been performed in due time. If the applicant or the patent holder wishes to obtain such a declaration, he or she shall within the time limit prescribed above, file a request to that effect with the Patent Authority and pay a fee.

With respect to the respite referred to in Article 6, a declaration pursuant to the first Paragraph may be made only if the application

for which priority is claimed has been filed at the latest within two months from the expiry of the respite and a request for a declaration has been made and the fee has been paid within the same period.

With respect to an international patent application that has been pursued in Sweden in accordance with Article 31, the first and second Paragraphs apply also if the applicant has suffered a loss of rights because he or she has not observed a respite with regard to the Receiving Authority, the International Searching Authority, the International Preliminary Examining Authority or the International Bureau. The act that has not been performed within the respite shall in the cases referred to here be performed at the Patent Authority.

#### **Article 73**

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

1. the interruption of the postal services occurred on any of the ten days preceding the expiration of the respite because of war, revolution, civil disorder, strike, natural disaster or other similar circumstance in the locality where the sender is staying or has his place of business, and the document or fee was mailed to the Patent Authority within five days after the resumption of the postal service, or
2. the document or fee was mailed to the Patent Authority by registered mail no later five days after the expiry of the respite, but only if the mail was sent by air mail where this was possible or the sender had reason to assume that the mailing by surface mail should have arrived to the Patent Authority within two days from the date of the mailing.

If the applicant wishes to obtain a declaration pursuant to the first Paragraph, he shall file a written petition to that effect at the Patent Authority within the time limit prescribed there for the action.

#### **Article 74**

If a request under Article 72 or 73 has been approved and as a result thereof the processing of a patent application that has been dismissed

or rejected after having been made available under Article 22 is resumed, or a patent that has become invalid is considered maintained, an announcement to that effect shall be published.

If anyone after the expiry of the time limit for restoration of the dismissed application or after the decision on rejection has gained legal force, or the patent has become invalid, but before the said announcement has been published, has commenced in good faith the commercial exploitation of the invention in this country, he may, notwithstanding the patent, continue such exploitation while retaining its general character. Such a right to exploitation shall also be granted on corresponding conditions to anyone who has made substantial preparations for commercial exploitation of the invention in this country.

The right under the preceding Paragraph may only be transferred to others together with the business activity in which it originated or in which the exploitation was intended to take place.

#### **Article 75**

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

A final decision by the Court of Patents Appeals may be appealed to the Supreme Administrative Court within two months from the date of the decision. In this case, the provisions in Articles 35 to 37 of the Act on Administrative Procedures on appeals against decisions by the Administrative Court of Appeal shall apply. Decisions by the Court of Patent Appeals shall indicate that a special review permit is required for consideration by the Supreme Administrative Court and the grounds on which such leave is granted.

#### **Article 76**

Fees under this Act are decided by the Government. As regards annual fees, the Government may prescribe that one or more of the first fee years shall be exempt from fees.

#### **Article 77**

The Government or the Authority designated by the Government issues provisions concerning the implementation of this Act. Diaries kept by the Authority shall be available to the public to the extent prescribed by the Government.



The Government may issue provisions that documents in matters relating to patent applications may be delivered to an Authority in another State.

Furthermore, the Government may also issue provisions to the effect

1. that the examination of patent applications may, upon request by the Patent Authority, be carried out at an Authority in another State or at an international institution, and

2. that a party that applies for a patent on an invention for which he or she has applied for a patent in another State, shall be obliged to report what the Patent Authority in that State has communicated to him or her concerning the examination of the patentability of the invention.

Provisions concerning the obligation to provide reports pursuant to the third Paragraph, item 2, may, however, not be issued in respect of a patent application referred to in Chapter 3, if it has been the subject of an international preliminary examination and a report concerning that examination has been filed at the Patent Authority.

#### **Article 78**

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

If a party other than the State has availed itself of the right to an invention pursuant to the first Paragraph and if the party does not fulfil its obligations with regard to compensation, the State shall be obliged to immediately pay the said compensation, upon request by the party entitled to the compensation.

#### **Article 79**

Special provisions apply to inventions of importance for the defence of the country.

## **Chapter 11 European Patents**

### **Article 80**

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

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

The provisions of Articles 81 to 93 apply to a European patent for Sweden and a European patent application designating Sweden.

### **Article 81**

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

### **Article 82**

A European patent has effect in Sweden only if the applicant, within three months from the date when the European Patent Office has announced its decision to grant the patent has,

- filed at the Patent Authority a translation, in the manner prescribed in the third Paragraph, of the text with which the patent has been granted by the European Patent Office and
- paid a fee for the publication.

If the European Patent Office decides that a European patent shall be maintained in an amended wording or be limited, what has been said now applies also in respect of the amended text.

The patent claims shall always be filed in a translation into Swedish. If the patent has been granted in German or French, the description shall be filed in translation into Swedish or English.

The translation shall be made available to anyone. It shall, however, not be made available before the European Patent Office has published the European patent application.

If the translation has been filed and the fee has been paid within the

time prescribed and the European Patent Office has announced its decision to grant the patent or decided that the European Patent shall be maintained in an amended wording or be limited, this fact shall be announced by the Patent Authority.

#### **Article 83**

If the patent holder has not, within the prescribed time limit, completed the act referred to in Article 82, first Paragraph, the provisions of Article 72, first Paragraph, concerning patent applicants shall apply mutatis mutandis. If it is declared, pursuant to Article 72, that such an act shall be deemed to have been completed within the proper time limit, the Patent Authority shall announce this fact.

If someone has, after the time limit for completion of the acts under Article 82, first Paragraph, has expired but before the announcement has been published, commenced in good faith the commercial exploitation of the invention in this country or made substantial preparations for it, he shall enjoy the rights provided for in Article 74, second and third Paragraphs.

#### **Article 84**

(Repealed through Act 1993:1406).

#### **Article 85**

If the European Patent Office has decided to limit or, wholly or in part, invalidate a European patent, this act shall have the same effect as if the patent had been limited or declared invalid to the corresponding extent in Sweden. In order for a decision on limitation to have effect in Sweden, the requirements pursuant to Article 82 have, however, to be fulfilled. The Patent Authority shall announce the decision.

#### **Article 86**

Annual fees for European patents shall be paid to the Patent Authority for each fee year commencing after the year in which the European Patent Office announced its decision to approve the patent application. If the annual fee for a European patent is not paid pursuant to the provisions in the first Paragraph and in Articles 41 and 42, Article 51 shall apply mutatis mutandis. The first annual fee for a European patent is not, however, due for payment before two months have passed from the date on which the patent was granted.

#### **Article 87**

A European patent application for which the European Patent Office has accorded a filing date, shall in Sweden have the same effect as a Swedish patent application with the same filing date. If the application under the European Patent Convention enjoys priority from an earlier date than the filing date, such priority shall be taken into consideration.

For the purposes of the application of Article 2, second Paragraph, second sentence, the publication of a European patent application pursuant to Article 93 of the European Patent Convention shall be equivalent to the application being made available to the public pursuant to Article 22. This applies also to any publication referred to in Articles 153.3 or 153.4 of the Convention if this publication by the European Patent Office is considered as equivalent to a publication pursuant to Article 93.

#### **Article 88**

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

If someone commercially exploits an invention for which patent protection is sought in a European patent application after the announcement pursuant to the first Paragraph has been published, the provisions concerning patent infringement shall apply *mutatis mutandis* if the application results in a patent for Sweden. In such a case, the patent protection shall, however, extend only to what emerges from both the patent claims as worded when published and the claims according to the patent. Punishment shall not be imposed and compensation for damages may only be determined pursuant to Article 58, second Paragraph.

The provisions of Article 58, third Paragraph, shall not apply if the action for compensation is instituted at the latest one year after the time period for opposition against the European patent expired, or, if an opposition has been filed, at the latest one year after the decision by the European Patent Office to maintain the patent.

#### **Article 89**

If a European patent application or a claim that such an application

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

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

#### **Article 90**

If a text has been translated and filed at the Patent Authority pursuant to Article 82 or 88, the wording of the text in the language of the proceedings before the European Patent Office is the authentic one.

When a translation referred to in the first Paragraph is made available by the Patent Authority, it shall be evident that the wording of the language of the proceedings at the European Patent Office is the authentic one.

#### **Article 91**

(Repealed through Act 2014:434)

#### **Article 92**

If the European Patent Office has decided to limit or to revoke, fully or in part, a European patent or if such circumstances have occurred as regards a European patent application that are referred to in Article 89, but the European Patent Office declares that, under the European Patent Convention, the patent holder or the applicant shall be granted restitutio in integrum, this shall apply also in Sweden.

If anyone, after the decision was issued or the circumstances occurred, but before the European Patent Office published an announcement concerning the declaration referred to in the first Paragraph, has, in good faith, commenced the commercial exploitation of the invention in Sweden, or made substantial preparations therefore, he or she shall enjoy the right specified in Article 74, second and third Paragraphs.

If the European Patent Office has set aside a decision pursuant to Article 112 a of the European Patent Convention, the decision by the European Patent Office on the setting aside applies also in Sweden.

If a European patent has become valid in Sweden after the European Patent Office has decided to set aside a decision, the provisions of the second Paragraph shall apply, if the exploitation had commenced or preparations were made before the announcement of the decision on

the setting aside was published. The corresponding applies if the patent protection for a European patent with validity in Sweden has been extended after the European Patent Office has decided on the setting aside of a decision.

### **Article 93**

If a European patent application that has been filed at a national Patent Authority is deemed to be withdrawn because the European Patent Office did not receive it within the prescribed time limit, the Patent Authority shall, pursuant to a claim by the applicant, take up the application for processing as converted into an application for a Swedish patent, provided

1. that the claim is filed at the National Authority that received the patent application within three months from the point in time when the applicant was notified that the application was deemed to be withdrawn and, furthermore, it is received by the Patent Authority within 20 months from the date of filing of the application or, if priority is claimed, the date from which priority is claimed, and

2. that the applicant pays, within the time period determined by the Government, the prescribed application fee and files a translation into Swedish or English of the patent application, or, if the application is drawn up in English, a copy of the application.

If the patent application fulfils the requirements as to the form of the application prescribed in the European Patent Convention and its Implementing Regulations, it shall be accepted in this respect.

## **Chapter 12 Pledge.**

### **Article 94**

Patents that have been granted or that have effect in this country may be pledged pursuant to the provisions in this Chapter.

Pledges may also apply to

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

A pledge of a patent application also extends to a part of the application that becomes the subject of a division or a breaking out.

### **Article 95**

A pledge of a patent or a patent application comes into being by registration of a written contract pledging the property. The application for registration shall be filed at the Patent Authority.

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

If a pledge has been granted to several parties individually, precedence shall be given to the grant for which the application for registration was first received by the Patent Authority, unless otherwise agreed.

If applications for registration of several pledges are filed on the same day, precedence shall be given to them in accordance with the chronological order in which they took place, unless otherwise agreed.

If the contracts are simultaneous or it cannot be determined in which chronological order they took place, they shall have the same right.

### **Article 96**

An application for registration under Article 95 shall be made by the party having the right to the patent or the patent application or by the party to whom a pledge has been granted. The applicant shall prove the right of the pledger to the patent or the patent application.

The holder of the patent recorded in the Register of Patents shall be deemed to have the right to the patent unless the case shows otherwise.

If the application for registration relates to a pledge of a patent

application, the party that is registered as the inventor or his assignee shall be deemed to have the right to the patent application, unless the case shows otherwise.

If, when the application for registration is filed, the pledger does not have the pledged property at his disposal due to distraint, bankruptcy, legal incapacity, ensuring of payment, sequestration or for some other reason, the application must not be approved.

#### **Article 97**

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

A contract in which a patent application is pledged may be registered when the patent application has been recorded in the Diary at the Patent Authority, or, if the contract is related to a European patent application, when an announcement under Article 88 has been published. If a pledged patent application results in the granting of a patent, the patent shall thereafter constitute the pledged property.

#### **Article 98**

Even though a registration has been made, the right to the pledged property only applies if the contract was concluded by a party that is the proper owner of the property and is entitled to dispose thereof and if the contract is not invalid for any other reason.

#### **Article 99**

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

#### **Article 100**

The registration shall be removed from the files if the pledge, through a judgement that has gained legal force has been declared invalid or if the pledge has lapsed or otherwise has ceased to be valid.

#### **Article 101**

The pledging of a patent or a patent application has effect from the time of the application for registration under Article 95 against anyone else who later acquires ownership of, or any other right in, the property.



A licence agreement is valid against the pledgee if the agreement was concluded before the application for registration of the pledge contract.

**Article 102**

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

If a pledged patent or a patent application is being sold upon distraint or bankruptcy, licence agreements referred to in Article 101, second Paragraph, shall remain in force.

**Article 103**

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

After a sale pursuant to this Article, license agreements referred to in Article 101, second Paragraph, remain in force.

**Article 104**

Anyone who applies for registration pursuant to this Chapter shall pay a fee. The Government determines the amount of the fee.

## **Chapter 13 Supplementary Protection.**

### **Article 105**

Anyone who applies for supplementary protection or extension of the period for a supplementary protection in accordance with Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products or for supplementary protection in accordance with Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 June 1996 concerning the creation of a supplementary protection certificate for plant protection products shall pay a fixed application fee.

Also an annual fee shall be paid for the supplementary protection. The fee year is computed from the date when the protection commenced to be valid and thereafter from the corresponding date.

### **Article 106**

The provisions in Chapter 9 on liability shall also apply to supplementary protection.

### **Articles 106 to 114**

(Repealed by Act 1994:1511)