SWITZERLAND

Patent Law

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First Title General Provisions

Section 1 Requirements for Obtaining a Patent and Effects of the Patent

A. Patentable inventions

I. Principle

Art. 1

1. Patents for inventions are granted for new inventions applicable in industry.

2. Anything that is obvious having regard to the state of the art (Art. 7 para. 2) is not patentable as an invention.

3. Patents are granted without the guarantee of the State.

II. The human body and its elements

Art. 1a

1. The human body as such, at all stages of its formation and development, including the embryo, is not patentable.

2. Elements of the human body in their natural environment are not patentable. An element of the human body is, however, patentable as an invention if it is produced by means of a technical process, a beneficial technical effect is indicated and the further requirements of Article 1 are fulfilled; Article 2 remains reserved.

III. Gene sequences

Art. 1b

1. A naturally occurring sequence or partial sequence of a gene is not patentable as such.

2. Sequences that are derived from a naturally occurring sequence or partial sequence of a gene may, however, be patented as an invention if they are produced by means of a technical process, their function is specifically indicated, and the further requirements of Article 1 are fulfilled; Article 2 remains reserved.

B. Exclusion from patentability

Art. 2

1. Inventions whose exploitation is contrary to human dignity or that disregard the integrity of living organisms or that are in any other way contrary to public policy or morality are not patentable. In particular, no patent may be granted for:

a. processes for cloning human beings and the clones obtained thereby;

b. processes for forming hybrid organisms by using human germ cells, human totipotent cells or human embryonic stem cells and the entities obtained thereby;

c. processes of parthenogenesis by using human germinal material and the parthenogenetic entities obtained thereby;

d. processes for modifying the germ line genetic identity of human beings and the germ line cells obtained thereby;

e. unmodified human embryonic stem cells and stem cell lines;

f. the use of human embryos for non-medical purposes;

g. processes for modifying the genetic identity of animals which are likely to cause them suffering without being justified by overriding interests worthy of protection, and also animals resulting from such processes.

2. Also excluded from patentability are:

a. methods for treatment by surgery or therapy and diagnostic methods practised on the human or animal body;

b. plant varieties and animal varieties or essentially biological processes for the production of plants or animals; however, subject to the reservation of paragraph 1, microbiological or other technical processes and the products obtained thereby as well as inventions that concern plants or animals are patentable provided that their application is not technically confined to a single plant or animal variety.

C. Right to the grant of a patent

I. Principle

Art. 3

1. The inventor, his successor in title, or a third party owning the invention under any other title has the right to the grant of the patent.

2. Where several inventors have made an invention jointly, they have this right jointly.

3. Where two or more inventors have made the invention independently of each other, the person who makes the earlier application or whose application has the earliest priority date has this right.

II. In the examination procedure

Art. 4
In the procedure before the Swiss Federal Institute of Intellectual Property (IPI), the patent applicant is deemed entitled to request the grant of the patent.

D. Mention of the inventor

I. Right of the inventor

Art. 5
1. The patent applicant must provide the IPI with written confirmation of the name of the inventor.

2. The person named by the patent applicant shall be mentioned as the inventor in the Patent Register, in the publication of the patent application and in the grant of the patent, as well as in the patent specification.

3. Paragraph 2 applies by analogy if a third party produces an enforceable judgment establishing that he and not the person named by the patent applicant is the inventor.

II. Waiver of mention

Art. 6
1. If the inventor named by the patent applicant waives his right to the measures provided for in Article 5 paragraph 2, these measures shall not be taken.

2. A declaration made beforehand by the inventor waiving the right to be mentioned as such has no legal effect.

E. Novelty of the invention

I. State of the art

Art. 7

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

2. The state of the art comprises everything made available to the public by means of a written or oral description, by use, or in any other way prior to the filing or priority date.

3. With regard to novelty, the state of the art also includes the content of an earlier application or application with earlier priority designating Switzerland in the version originally filed, and with a filing or priority date that precedes the date mentioned in paragraph 2, and which was only made available to the public on or after that date, provided that:
a. in the case of an international application, the requirements of Article 138 are fulfilled;
b. in the case of a European application based on an international application, the requirements of Article 153 paragraph 5 of the European Patent Convention of 5 October 1973 in its revised version of 29 November 2000 are fulfilled;
c. in the case of a European application, the fees for the valid designation of Switzerland as per Article 79 paragraph 2 of the European Patent Convention of 5 October 1973 in its revised version of 29 November 2000 have been paid.

II. (Repealed)

Art. 7a (Repealed)

III. Non-prejudicial disclosures

Art. 7b

Where the invention has been made available to the public in the six months prior to the application date or priority date, this disclosure does not form part of the state of the art when it is due to, or a consequence of:
a. an evident abuse in relation to the patent applicant or his legal

predecessor; or
b. the fact that the patent applicant or his legal predecessor has displayed the invention at an official or officially recognised international exhibition falling within the terms of the Convention on International Exhibitions of 22 November 1928, and he has declared the fact at the time of filing and has produced sufficient supporting evidence in due time.

IV. New use of known substances

a. First medical use

Art. 7c
Any substance or composition that forms part of the state of the art as such, but not in relation to its use in a surgical, therapeutic or diagnostic method specified in Article 2 paragraph 2 letter a is deemed to be new provided it is intended solely for such use.

b. Further medical uses

Art. 7d
Any substance or composition that forms part of the state of the art as such, but not in relation to a specific use in a surgical, therapeutic or diagnostic method specified in Article 2 paragraph 2 letter a that is distinct from the first medical use specified in Article 7c is deemed to be new provided it is intended for use in the manufacture of a means to a surgical, therapeutic or diagnostic end.

F. Effects of the patent

I. Right of exclusivity

Art. 8
1. The patent confers on its proprietor the right to prohibit others from commercially using the invention.

2. Use includes, in particular, manufacturing, storage, offering, placing on the market, importing, exporting and carrying in transit, as well as possession for any of these purposes.

3 Carrying in transit may only be prohibited if the proprietor of the

patent is permitted to prohibit importation into the country of destination.

II. Manufacturing process

Art. 8a

1. If the invention concerns a manufacturing process, the effects of the patent also extend to the products directly obtained by that process.

2. If the products directly obtained by the process concern biological material, the effects of the patent also extend to products obtained by propagating the biological material and which demonstrate the same characteristics. Article 9a paragraph 3 remains reserved.

III. Genetic information

Art. 8b

If the invention concerns a product that consists of or contains genetic information, the effects of the patent extend to any material in which the product is incorporated and in which the genetic information is contained and performs its function. Article 1a paragraph 1 and 9a paragraph 3 remain reserved.

IV. Nucleotide sequences

Art. 8c

The protection conferred by a claim to a nucleotide sequence that is derived from a naturally occurring sequence or partial sequence of a gene is limited to the sequence segments that perform the function specifically described in the patent.

G. Exceptions to effects of the patent

I. In general

Art. 9

1. The effects of the patent do not extend to:

a. acts undertaken within the private sphere for non-commercial purposes;

b. acts undertaken for research or experimental purposes in order to

obtain knowledge about the subject-matter of the invention including its uses; in particular, any scientific research concerning the subject-matter of the invention is permitted;
c. acts necessary for obtaining marketing authorisation for a medicinal product in Switzerland or in countries with equivalent medicinal product control;
d. the use of the invention for teaching purposes at educational institutions;
e. the use of biological material for the purpose of the production or the discovery and development of a plant variety;
f. biological material that is obtained in the field of agriculture due to chance or is technically unavoidable.
g. acts undertaken as part of a medical activity concerning an individual person or animal and involving a medicinal product, in particular the prescribing, dispensing or use of medicinal products by legally authorised persons;
h. the direct individual preparation of medicinal products in pharmacies in accordance with a doctor's prescription or to acts concerning medicinal products prepared in this way.

2. Agreements which limit or revoke the powers contained in paragraph 1 are null and void.

II. In particular

Art. 9a
1. If the proprietor of the patent has placed patent-protected goods on the market in Switzerland or within the European Economic Area, or consented to their placing on the market in Switzerland or within the European Economic Area, these goods may be imported and used or resold commercially in Switzerland.

2. If he has placed apparatus that can be used with a patent-protected process on the market in Switzerland or within the European Economic Area, or consented to its placing on the market in Switzerland or within the European Economic Area, the first and each subsequent person who acquires the apparatus is entitled to use this process.

3. If the proprietor of the patent has placed patent-protected biological material on the market in Switzerland or within the European Economic Area, or consented to its placing on the market in Switzerland

or within the European Economic Area, this material may be imported and propagated in Switzerland, provided this is necessary for its intended use. The material so obtained may not be used for further propagation. Article 35a remains reserved.

4. If the proprietor of the patent has placed patent-protected goods on the market outside the European Economic Area or consented to their placing on the market outside the European Economic Area und if the patent protection for the functional characteristics of the goods is only of subordinate importance, the goods may be imported commercially. Subordinate importance is presumed unless the proprietor of the patent provides prima facie evidence to the contrary.

5. Irrespective of the provisions of paragraphs 1–4, the consent of the proprietor of the patent for the placing on the market of patent protected goods is reserved if their price in Switzerland or in the country in which they are placed on the market is fixed by the state.

Art. 10 (Repealed)

H. Marking of patented products

I. Patent mark

Art. 11

1. Products that are protected by a patent, or their packaging, may be marked as being patented with the Federal Cross and the number of the patent. The Federal Council may prescribe additional indications.

2. The proprietor of the patent may require any prior user or any licensee to affix the patent mark on the products manufactured by them or on the packaging of such products.

3. If the prior user or licensee does not comply with the requirement of the proprietor of the patent, he is liable to the latter for any resulting losses without prejudice to the proprietor’s right to require the use of the patent mark.

II. Other markings

Art. 12

1. Any person who issues or offers for sale his business papers, notices of any kind, products or goods bearing any other notice referring to patent protection must inform any third party on request of the number of the patent application or the patent to which the notice refers.

2. Any person who accuses third parties of infringing his rights or warns them against such infringement must, on request, give them the same information.

J. Residence abroad

Art. 13

1. Any person who is involved in administrative proceedings provided for in this Act and does not have a residence or principal place of business in Switzerland must designate an address for service in Switzerland unless international law or the competent foreign body permits the authority to serve documents directly in the state concerned. An address for service in Switzerland is not required for:

a. filing a patent application for the purpose of being accorded a filing date;

b. paying fees, filing translations and filing and handling requests after the grant of the patent, in so far as the requests do not give rise to any objections.

1bis. The IPI is entitled to declare to the competent foreign body that direct service is permitted in Switzerland in intellectual property matters provided Switzerland is granted reciprocal rights.

2. The provisions concerning the practice of the profession of attorney remain reserved.

K. Term of patent

I. Maximum term

Art. 14

1. The maximum term of the patent is 20 years from the filing date of the application.

2. (Repealed)

II. Premature lapse

Art. 15

1. The patent lapses:

a. if the proprietor surrenders it by written declaration to the IPI;

b. if a renewal fee that has become due is not paid within the prescribed time.

2. (Repealed)

L. Reservation

Art. 16

Patent applicants or proprietors who are Swiss nationals may rely on the provisions of the binding text for Switzerland of the Paris Convention for the Protection of Industrial Property of 20 March 1883, where those provisions are more favourable than the provisions of this Act.

Section 2 Right of Priority

A. Conditions and effects of priority

Art. 17

1. Where an invention is the subject of a regular filing of an application for a patent for an invention, a utility model or an inventor's certificate, and where the filing takes place in or with effect in a country that is a party to the Paris Convention for the Protection of Industrial Property of 20 March 1883 or the Agreement Establishing the World Trade Organization of 15 April 1994, (Appendix 1C, Agreement on Trade-Related Aspects of Intellectual Property Rights), it shall give rise to a right of priority in accordance with Article 4 of the Paris Convention. This right may be claimed for a patent application filed in Switzerland for the same invention within 12 months from the date of the first filing.

1bis. The first filing in a country that grants reciprocity to Switzerland has the same effect as the first filing in a country that is party to the Paris Convention for the Protection of Industrial Property.

1ter. Except as otherwise provided by this Act or by the Ordinance, paragraph 1 above and Article 4 of the Paris Convention for the Protection of Industrial Property of 20 March 1883 apply by analogy to a first filing in Switzerland.

2. The effect of the priority right is that the application may not be prejudiced by any circumstances that have arisen since the date of the first filing.

3. (Repealed)

B. Entitlement to claim the right of priority

Art. 18

1. (Repealed)

2. The right of priority may be claimed by the first applicant or the person who has acquired the right belonging to the first applicant to file a patent application in Switzerland for the same invention.

3. If the first filing, the filing in Switzerland or both were effected by a person who was not entitled to the grant of the patent, the entitled person may claim the priority deriving from that first filing.

C. Formal requirements

Art. 19

1. Any person claiming a right of priority must file a declaration of priority and a priority document with the IPI.

2. The right of priority is forfeited if the time limits and formal requirements laid down by the Ordinance are not complied with.

D. Burden of proof in legal proceedings

Art. 20

1. Acceptance of a priority claim in the procedure for the grant of the patent does not relieve the proprietor of the patent of the obligation to prove the existence of such right in the case of legal proceedings.

2. The filing on the basis of which priority is claimed is presumed to be the first filing (Article 17 para. 1 and 1bis).

E. Prohibition of double patenting

Art. 20a

Where an inventor or his successor in title has obtained two patents with the same filing date or priority date for the same invention, the effects of the patent based on the earlier application cease insofar as the scope of protection afforded by the two patents is the same.

Art. 21-23 (Repealed)

Section 3 Modifications concerning the Validity of the Patent

A. Partial surrender

I. Conditions

Art. 24

1. The proprietor of the patent may partially surrender the patent by requesting the IPI to:

a. revoke a patent claim (Art. 51 and 55); or

b. limit an independent claim by combining one or more patent claims, which are dependent on it; or

c. limit an independent claim in some other way; in such cases, the limited claim must refer to the same invention and define an embodiment that is included in the specification of the published patent and in the version of the patent application that determined the date of filing.

2. (Repealed)

II. Issue of new patents

Art. 25

1. If, as a result of a partial surrender, patent claims remain that may not exist in the same patent in accordance with Articles 52 and 55, the patent shall be limited accordingly.

2. The proprietor of the patent may apply for the issue of one or more new patents to cover the dropped patent claims; such new patents are given the filing date of the original patent.

3. Following registration of the partial surrender in the Patent Register, the IPI shall set a time limit for the proprietor of the patent to apply for the issue of new patents in accordance with paragraph 2; after this time limit has expired, an application is no longer accepted.

B. Nullity action

I. Grounds for nullity

Art. 26

1. The court shall, on application, declare the nullity of the patent if:

a. the subject-matter of the patent is not patentable under Articles 1, 1a, 1b and 2;

b. the invention is not described in the patent specification in a manner sufficiently clear and precise for it to be carried out by a person skilled in the art;

c. the subject-matter of the patent goes beyond the content of the patent application in the version that determined the filing date;

d. the proprietor of the patent is neither the inventor nor his successor in title, nor has a right to the grant of the patent on other legal grounds.

2. Where a patent is granted with recognition of priority, and the application claiming the priority does not lead to a patent, the court may require the proprietor of the patent to state the grounds and to present evidence; if the information is withheld, the court has full discretion in its judgment of this.

II. Partial nullity

Art. 27

1. Where a ground for nullity applies to only a part of the patented invention, the court shall limit the patent accordingly.

2. The court shall give the parties an opportunity to be heard on the proposed new version of the patent claim; it may also request the opinion of the IPI.

3. Article 25 applies by analogy.

III. Right of action

Art. 28

Any person with a proven interest may bring a nullity action, with the exception of an action under Article 26 paragraph 1 letter d, which may be brought only by an entitled person.

C. Effects of the modification of the validity of the patent

Art. 28a

The effects of the granted patent shall be deemed not to have occurred from the outset insofar as the proprietor of the patent surrenders the patent or the court declares the nullity of the patent based on a nullity action.

Section 4 Modifications concerning the Right to the Grant of the Patent and the Right to the Patent; Grant of Licences

A. Action for assignment

I. Conditions and effects against third parties

Art. 29

1. When the patent application has been filed by an applicant who, under Article 3, is not entitled to the grant of the patent, the entitled person may apply for assignment of the patent application or, if the patent has already been granted, he may apply for assignment of the patent or file an action for nullity.

2. (Repealed)

3. If an assignment is ordered, licences or other rights granted to third parties in the intervening period lapse; however, if they have used the invention commercially in Switzerland in good faith or have made special preparations to do so, these third parties are entitled to be granted a non-exclusive licence.

4. Any claims for damages are reserved.

5. Article 40e applies by analogy.

II. Partial assignment

Art. 30

1. If the plaintiff cannot prove his right to all claims of the patent, assignment of the patent application or of the patent shall be subject to the deletion of the patent claims to which the plaintiff has not proved his right.

2. Article 25 applies by analogy.

III. Deadline for filing an action

Art. 31

1. An action for assignment must be filed within two years from the official date of the publication of the patent specification.

2. An action against a defendant acting in bad faith has no filing deadline.

B. Expropriation of the patent

Art. 32
1. Where public interest so dictates, the Federal Council may expropriate all or part of the patent.

2. The former proprietor of an expropriated patent is entitled to full compensation which, in the event of any dispute, is fixed by the Federal Supreme Court; the provisions of Section II of the Compulsory Purchase Act of 20 June 1930 apply by analogy.

C. Transfer of the right to the grant of the patent and of the right to the patent

Art. 33
1. The right to the grant of the patent and the right to the patent passes to the heirs; these rights may be assigned to third parties either wholly or in part.

2. Where the said rights are owned by two or more persons, each entitled person may exercise the rights only with the consent of the others; however, each one may independently dispose of his part or bring an action for infringement of the patent.

2bis. The transfer of a patent application and of the patent by legal act is valid only if evidenced in writing.

3. A patent may be transferred without the transfer being recorded in the Patent Register; however, until an entry is made, any action provided for in this Act may be taken against the former proprietor of the patent.

4. Rights of third parties not recorded in the Patent Register are invalid against persons who have acquired the rights to the patent in good faith.

D. Grant of licences

Art. 34

1. The patent applicant or the proprietor of the patent may grant third parties the right to use the invention (grant of licences).

2. Where the patent application or the patent is owned by two or more persons, a licence may not be granted without the consent of all entitled persons.

3. Licences of third parties not recorded in the Patent Register are invalid against persons who have acquired in good faith the rights to the patent.

Section 5 Legal Restrictions on Rights conferred by the Patent

A. Prior user rights; foreign vehicles

Art. 35

1. A patent may not be invoked against any person who, prior to the filing or priority date of the patent application, was commercially using the invention in good faith in Switzerland or had made special preparations for that purpose.

2. Any such person under paragraph 1 may use the invention for the purposes of their trade or business; this right may be transferred or bequeathed only together with the trade or business.

3. A patent has no effect with regard to vehicles which are only temporarily in Switzerland, nor to equipment attached to these vehicles.

Abis. Farmers' privilege

I. Principle

Art. 35a

1. Farmers who have acquired plant reproduction material placed on the market by the proprietor of the patent or with his consent may reproduce, on their own farm, the product from this material cultivated on their own farm.

2. Farmers who have acquired animal reproductive material or animals placed on the market by the proprietor of the patent or with his consent may reproduce, on their own farm, the animals obtained through reproduction of this material or these animals on their own farm.

3. Farmers are required to obtain the consent of the proprietor of the patent when they wish to give the product of their harvest or the animal or animal reproductive material obtained to third parties for reproduction purposes.

4. Contractual agreements which limit or revoke the farmers' privilege in the area of food and feed production are null and void.

II. Scope and compensation

Art. 35b
The Federal Council determines the plant species included under the farmers' privilege; in so doing, it shall in particular take into consideration their importance as raw materials for food and feed.

B. Dependent rights

I. Dependent inventions

Art. 36
1. If a patented invention cannot be used without infringing a prior patent, the proprietor of the later patent has the right to a nonexclusive licence to the extent required to use his invention, provided that the invention represents an important technical advance of considerable economic significance in relation to the invention that is the subject-matter of the prior patent.

2. A licence to use the invention that is the subject-matter of the prior patent may only be transferred jointly with the later patent.

3. The proprietor of the prior patent may make the grant of a licence conditional on the proprietor of the later patent granting him a licence to use his invention in return.

II. Dependent plant variety rights

Art. 36a
1. When a plant variety right may not be claimed or used without infringing an earlier-granted patent, the plant breeder or the owner of the plant variety has the right to a non-exclusive licence to the extent required to obtain and use his plant variety right, provided that the plant variety represents an important advance of considerable economic significance in comparison to the patent-protected invention. For varieties for agriculture and food, the criteria under the Seed Ordinance of 7 December 1998 serve as a reference point.

2. The proprietor of the patent may make the grant of a licence conditional on the owner of the plant variety granting him a licence

to use his plant variety right in return.

C. Exploitation of the invention in Switzerland

I. Action for the grant of a licence

Art. 37

1. Three years from the date of the grant of the patent, or at the earliest four years after filing the patent application, any person with a legitimate interest may apply to the court for the grant of a non-exclusive licence to use the invention if the proprietor of the patent has not sufficiently exploited it in Switzerland by the time of the action and cannot justify such a failure. Importing is also considered domestic exploitation.

2. (Repealed)

3. At the request of the plaintiff, the court may grant a licence immediately after the action has been filed without prejudice to the final judgment providing that, in addition to the conditions set out in paragraph 1, the plaintiff provides prima facie evidence that he has an interest in the immediate use of the invention and that he provides adequate security to the defendant; the defendant shall be given the opportunity to be heard beforehand.

II. Action for cancellation of the patent

Art. 38

1. If the grant of licences does not suffice to meet the demand of the domestic market, any person with a proven interest may bring an action for the cancellation of the patent after a period of two years from the grant of the first licence under Article 37 paragraph 1.

2. If the legislation of the country of which the proprietor of the patent is a national or in which he is resident allows an action for cancellation of the patent for failure to exploit the invention in that country as early as three years after the grant of the patent, such an action shall be allowed instead of the action for the grant of a licence, subject to the conditions specified in Article 37 for the grant of licences.

III. Exceptions

Art. 39
The Federal Council may decree Articles 37 and 38 to be inapplicable with regard to nationals of countries granting reciprocity.

D. Licence in the interest of the public

Art. 40
1. Where public interest so dictates, the person to whom the proprietor of the patent has, without sufficient reason, refused to grant the licence requested, may apply to the court for the grant of a licence to use the invention.

2. (Repealed)

E. Compulsory licences in the field of semiconductor technology

Art. 40a
For inventions in the field of semi-conductor technology, a nonexclusive licence may only be granted to remedy a practice held to be anti-competitive in court or administrative proceedings.

F. Research tools

Art. 40b
Any person who intends to use a patented biotechnological invention as an instrument or means for research is entitled to a non-exclusive licence.

G. Compulsory licences for diagnostic tools

Art. 40c
For inventions concerning a diagnostic product or procedure for humans, a non-exclusive licence shall be granted to remedy a practice held to be anti-competitive in court or administrative proceedings.

H. Compulsory licences for the export of pharmaceutical products

Art. 40d
1. Any person may bring an action before the court to be granted a

nonexclusive licence for the manufacture of patent-protected pharmaceutical products and for their export to a country that has insufficient or no production capacity of its own in the pharmaceutical sector and which requires these products to combat public health problems, in particular those related to HIV/AIDS, tuberculosis, malaria and other epidemics (beneficiary country).

2. Countries that have declared in the World Trade Organization (WTO) that they wholly or partly renounce their claim to a licence in accordance with paragraph 1 are excluded from being beneficiary countries in accordance with the terms of their declaration. All other countries that fulfil the requirements of paragraph 1 may be beneficiary countries.

3. The licence in accordance with paragraph 1 is limited to the production of the pharmaceutical product in the quantity that meets the requirements of the beneficiary country; the total quantity must be exported to the beneficiary country.

4. The owner of the licence in accordance with paragraph 1, as well as any manufacturer that produces products under licence, must ensure that they are clearly identified as products that have been produced under a licence in accordance with paragraph 1, and that the products are distinguished by their packaging or by their special colouring or shape from patent-protected products, provided this does not have a significant impact on the price of the products in the beneficiary country.

5. The Federal Council shall regulate the requirements for the grant of licences in accordance with paragraph 1. In particular, it shall stipulate the information or notifications the responsible court must possess in order to be able to decide on the grant of the licence in accordance with paragraph 1, and shall regulate the measures in accordance with paragraph 4.

I. Common provisions for Articles 36–40d

Art. 40e

1. The licences provided for in Articles 36–40d are granted only if efforts by the applicant to obtain a contractual licence on appropriate market terms within a reasonable period of time have been unsuccessful;

in the case of a licence in accordance with Article 40d, a period of 30 working days is regarded as reasonable. Such efforts are not required in situations of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use.

2. The scope and term of the licence are limited to the purpose for which it has been granted.

3. The licence may only be transferred with that part of the enterprise which uses the licence. This also applies to sub-licences.

4. The licence is primarily granted for supplying the domestic market. Article 40d remains reserved.

5. The proprietor of the patent has the right to appropriate remuneration. In assessing the remuneration, the circumstances of the individual case and the economic value of the licence are taken into account. In the case of a licence under Article 40d, the remuneration is determined by taking into account the economic value of the licence in the importing country, its level of development and the urgency in public health and humanitarian terms. The Federal Council shall specify the method of calculation.

6. The court shall decide on the grant and revocation of licences, on their scope and duration as well as on the remuneration payable. In particular, it shall revoke an entitled person’s licence on request if the circumstances that led to its being granted no longer apply and it is not expected that they will arise again. Appropriate protection of the legal interests of the entitled person remains reserved. Where a licence is granted under Article 40d, legal remedies have no suspensive effect.

Section 6 Fees

Art. 41

The obtainment and maintenance of a patent and the processing of special requests are subject to the payment of the relevant fees prescribed in the Ordinance.

Art. 42-46 (Repealed)

Section 7 Further Processing and Re-Establishment of Rights

A. Further processing

Art. 46a

1. If the patent applicant or the proprietor of the patent fails to observe a time limit prescribed by legislation or a time limit set by the IPI, he may file a request for further processing with the IPI.

2. He must file the request within two months of receiving notice from the IPI of failure to observe the time limit, and six months at the latest from the expiry of the said time limit.99 He must also carry out in full, within these time limits, the omitted act, supplement where necessary the patent application and pay the fee for further processing.

3. Acceptance of the request for further processing has the effect of restoring the situation that would have resulted from carrying out the act in good time. Article 48 remains reserved.

4. Further processing is ruled out in the case of failure to observe:
a. time limits that do not have to be observed vis-à-vis the IPI;
b. time limits for filing a request for further processing (para. 2);
c. time limits for filing a request for re-establishment of rights (Art. 47 para. 2);
d. time limits for filing a patent application accompanied by a claim for the right of priority and for the declaration of priority (Art. 17 and 19);
e. (Repealed)
f. the time limit for the modification of technical documents (Art. 58 para. 1);
g. (Repealed)
h. time limits for applying for the grant of a supplementary protection certificate (Art. 140f para. 1, Art. 146 para. 2, and Art. 147 para. 3) or to extend its validity (Art. 140o para. 1) and to issue a paediatric supplementary protection certificate (Art. 140v para. 1);
i. any other time limit laid down by ordinance where failure to comply with that time limit excludes further processing.

B. Reestablishment of rights

Art. 47

1. Where the patent applicant or proprietor of the patent provides prima facie evidence of having been prevented, through no fault on his part, from observing a time limit prescribed by this Act or the Implementing Ordinance or one set by the IPI, he shall be granted, on request, the re-establishment of his rights.

2. The request shall be filed with the authority for which the act should have been carried out within two months of the removal of the cause of non-compliance with the time limit, and at the latest within one year of expiry of the unobserved time limit; at the same time, the omitted act must be carried out.

3. Re-establishment of rights shall be ruled out in respect of paragraph 2 above (time limit for the request for re-establishment of rights).

4. Acceptance of the request shall have the effect of restoring the situation that would have resulted from carrying out the act in good time; Article 48 shall remain reserved.

C. Reservation for third parties

Art. 48

1. The patent may not be invoked against any person who, during the following periods, has commercially used an invention in good faith in Switzerland or who has made special preparations for that purpose:
a. between the last day of the time limit stipulated for payment of a patent renewal fee and the day on which a request for further processing (Art. 46a) or a request for re-establishment of rights (Art. 47) was filed;
b. between the last day of the priority period (Art. 17 para. 1) and the day on which the patent application was filed.

2. This prior user right is governed by Article 35 paragraph 2.

3. Any person claiming a prior user right based on paragraph 1 letter a must pay the proprietor of the patent appropriate compensation from the date on which the patent is revived.

4 In the event of dispute, the court shall decide on the existence and on the extent of the rights claimed by prior use and on the amount of compensation to be paid in accordance with paragraph 3.

Section 8 Representation and Supervision

A. Representation

Art. 48a

1. There is no obligation to be represented before the administrative authorities in proceedings under this Act.

2. Any party who does not want to represent himself in proceedings under this Act before the administrative authorities must be represented by a representative with an address for service in Switzerland.

B. Supervision

Art. 48b

Article 13 of the Patent Attorney Act of 20 March 2009 applies by analogy to representatives who are not registered in the Patent Attorney Register.

Second Title Grant of the Patent

Section 1 The Patent Application

A. Form of the application

I. In general

Art. 49

1. Any person who wishes to obtain a patent for an invention must file a patent application with the IPI.

2. The patent application must contain:
a. a request for the grant of a patent;
b. description of the invention and, where a claim is made for a sequence derived from a sequence or partial sequence of a gene, a specific description of the function it performs;
c. one or more patent claims;
d. the drawings to which the description or claims of the patent refer;
e. an abstract.

3. (Repealed)

II. Information on the source of genetic resources and traditional knowledge

Art. 49a

1. The patent application must contain information on the source:
a. of the genetic resource to which the inventor or the patent applicant had access, provided the invention is directly based on this resource;
b. of traditional knowledge of indigenous or local communities of genetic resources to which the inventor or the patent applicant had access, provided the invention is directly based on this knowledge.

2. If the source is unknown to the inventor or the patent applicant, the patent applicant must confirm this in writing.

B. Disclosure of the invention

I. In genera

Art. 50

1. The invention must be described in the patent application in such a manner that it can be carried out by a person skilled in the art.

2. (Repealed)

II. Biological material

Art. 50a

1. If an invention that relates to the manufacture or use of biological material cannot be sufficiently described, then the description must be completed by depositing a sample of the biological material and, in the description, by providing details of the essential characteristics of the biological material as well as a reference to the deposit.

2. If, in the case of an invention that relates to biological material as a product, the production process cannot be sufficiently described, then the description must be completed or replaced by depositing a sample of the biological material and, in the description, by a reference to the deposit.

3. The invention is deemed to be disclosed in accordance with Article 50 only if the sample of the biological material has been deposited at the latest on the filing date with a recognised depositary institution and the patent application as originally filed contains details of the biological material and reference to its deposit.

4. The Federal Council shall regulate in detail the requirements for depositing samples, for the details of biological material and for the reference to the deposit, together with access to the samples deposited.

C. Patent claims

I. Scope

Art. 51

1. The invention must be defined in one or more patent claims.

2. The claims of the patent shall determine the scope of protection conferred by the patent.

3. The description and drawings must be used to interpret the patent claims.

II. Independent claims

Art. 52

1. Each independent claim may define one invention only, namely:
a. a process, or
b. a product, a means for performing a process or an apparatus, or
c. an application of a process, or
d. a use for a product.

2. A patent may contain several independent claims when they define a set of inventions that are linked to each other in such a way that they constitute a single overall inventive concept.

Art. 53-54 (Repealed)

III. Dependent claims

Art. 55

Special embodiments defined by an independent claim may be the subject of dependent claims.

Art. 55a

D. Abstract

Article 55b

The abstract serves the sole purpose of providing technical information.

E. Filing date

I. In general

Art. 56

1. The date of filing is the day on which the last of the following items are filed:
a. an express or implied application for the grant of a patent;

b. information allowing the identity of the patent applicant to be established;
c. an item which appears to be a description.

2. For posted applications, the date of filing is the day on which it was given to the Swiss postal service for delivery to the IPI.

3. The Federal Council shall regulate the particulars, in particular the language in which the items under paragraph 1 must be filed, the date of filing and publication, whether a missing part of the description or the drawing may be filed afterwards, as well as the replacement of the description or the drawings with a reference to a patent application filed earlier

II. Division of the patent application

Art. 57
1. A patent application resulting from the division of an earlier application shall be given the same filing date as the earlier application:
a. if, at the time of its filing, it is expressly designated as being a divisional application;
b. if, at the time of filing of the divisional application, the earlier application was still pending; and
c. insofar as its subject-matter does not extend beyond the content of the earlier application as originally filed.

2. (Repealed)

F. Modification of the technical documents

Art. 58
1. Until the examination procedure has been completed, the patent applicant must be given the opportunity to modify the technical documents on at least one occasion.

2. The technical documents may not be modified such that the subject-matter of the modified patent application extends beyond the content of the technical documents originally filed.

G. Publication of patent applications

Art. 58a

1. The Institute shall publish patent applications:

a. immediately after the expiry of a period of 18 months from the filing date or, if priority has been claimed, from the priority date;

b. at the request of the applicant, before the expiry of the period specified in letter a.

2. The publication shall contain the description, the patent claims and, if applicable, the drawings, as well as the abstract, provided it is available for publication prior to completion of the technical preparations for publication, and if applicable, the report on the state of the art or the international-type search as specified in Article 59 paragraph 5.

If the report on the state of the art or the international-type search as specified in Article 59 paragraph 5 is not published with the patent application, they shall be published separately.

Section 2 The Examination Procedure

A. Subject-matter of the examination

Art. 59

1. If the subject-matter of the patent application does not fall within Articles 1, 1a, 1b and 2 or does so only in part, the IPI shall inform the patent applicant accordingly, stating the reasons, and shall set him a time limit within which to respond.

2. If the patent application does not meet the other requirements of this Act or the Ordinance, the IPI shall set a time limit for the patent applicant by which the deficiencies must be remedied.

3. (Repealed)

4. The IPI shall not examine whether the invention is new or whether it is obvious having regard to the state of the art.

5. In return for the payment of a fee, the applicant may:
a. instruct the IPI to provide a report on the state of the art within 14 months of the filing date, or, if priority has been claimed, of the priority date; or
b. request the IPI to arrange an international-type search within 6 months of the filing date of a first filing.

6. If no clarification has been carried out in accordance with paragraph 5, any person entitled to inspect the dossier in accordance with Article 65 may, in return for the payment of a fee, instruct the IPI to provide a report on the state of the art.

B. Completion of the examination

Art. 59a

1. If the requirements for the grant of a patent are fulfilled, the IPI shall inform the patent applicant that the examination procedure has been completed.

2. (Repealed)

3. The IPI shall reject the patent application if:

a. the application has not been withdrawn even though a patent may not be granted for the reasons stated in Article 59 paragraph 1; or
b. the deficiencies mentioned in Article 59 paragraph 2 have not been remedied.

Art. 59b (Repealed)

C. Opposition

Art. 59c

1. Within nine months of the publication of the entry in the Patent Register, any person may give notice of opposition to the IPI to a patent which has been granted by the latter. The notice of opposition must be filed in a written reasoned statement.

2. Opposition may only be filed on the grounds that the subject-matter of the patent is not patentable under Articles 1a, 1b and 2.

3. If the IPI finds in favour of the opposition in its entirety or in part, it may revoke the patent or maintain it as amended. The decision regarding an opposition is subject to appeal to the Federal Administrative Court.

4. The Federal Council shall regulate the particulars, in particular the procedure.

Art. 59d (Repealed)

Section 3 Patent Register; Publications by the IPI; Electronic Administrative Communication

A. Patent Register

Art. 60

1. The IPI shall grant the patent by registering it in the Patent Register.

1bis. The Patent Register shall, in particular, contain the following particulars: number of the patent, classification symbol, title of the invention, date of filing, name and domicile of the proprietor of the patent and, where applicable, priority data, name and business address of the representative and name of the inventor.

2. Any modifications concerning the validity of the patent or the right to the patent must be entered in the Patent Register.

3. (Repealed)

B. Publications

I. Concerning patent applications and registered patents

Art. 61

1. The Institute shall publish:
a. the patent application with the particulars listed in Article 58a paragraph 2;
b. the registration of the patent in the Patent Register, with the particulars listed in Article 60 paragraph 1bis;
c. the cancellation of the patent in the Patent Register;
d. any modifications registered in the Register concerning the validity of the patent and the right to the patent.

2. (Repealed)

3 The Institute shall determine the organ of publication.

Art. 62 (Repealed)

II. Patent specification

Art. 63
1. The IPI shall publish a patent specification for each patent granted.

2. This shall contain the description, the patent claims, the abstract, the drawings if any, and the particulars recorded in the Register (Art. 60 para. 1bis).

Art. 63a (Repealed)

C. Patent certificate

Art. 64
1. As soon as the patent specification is ready for publication, the IPI shall issue a patent certificate.

2. This consists of an attestation confirming the legal conditions for obtaining a patent have been met and a copy of the patent specification.

D. Inspection of the dossier

Art. 65
1. Following publication of the patent application, any person may inspect the dossier. The Federal Council may restrict the right of inspection only if manufacturing or trade secrets or other overriding interests so require.

2. The Federal Council shall regulate the cases in which inspection of the dossier is permitted prior to the publication of the patent application. It shall also regulate, in particular, the inspection of patent applications that were rejected or withdrawn before publication.

E. Electronic administrative communication

Art. 65a
1. The Federal Council may authorise the IPI to regulate electronic communication in accordance with the general provisions on the administration of federal justice.

2. The dossier and the files may be maintained and stored in electronic

form.

3. The Patent Register may be maintained in electronic form.

4. The IPI may make its data accessible, particularly online, to third parties; it may demand remuneration for this service.

5. The IPI’s publications may be produced in electronic form; the electronic version, however, shall only be authoritative if the data is published exclusively in electronic form.

Third Title Legal Protection

Section 1 Common Provisions for Protection under Civil and Criminal Law

A. Circumstances giving rise to liability

Art. 66

In accordance with the following provisions, the following persons may be held liable under civil and criminal law:

a. any person who uses a patented invention unlawfully; imitation is also deemed to constitute use;

b. any person who refuses to notify the authority concerned of the origin and quantity of products in his possession which are unlawfully manufactured or placed on the market, and to name the recipients and disclose the extent of any distribution to commercial and industrial customers;

c. any person who removes the patent mark from products or their packaging without authorisation from the proprietor of the patent or the licensee;

d. any person who abets any of the said offences, participates in them, or aids or facilitates the performance of any of these acts.

B. Reversal of the burden of proof

Art. 67

1. If the invention concerns a process for the manufacture of a new product, every product of the same composition shall be presumed to have been made by the patented process until proof to the contrary has been provided.

2. Paragraph 1 applies by analogy to a process for the manufacture of a known product if the proprietor of the patent provides prima facie evidence of an infringement of the patent.

C. Safeguarding manufacturing or trade secrets

Art. 68

1. The parties’ manufacturing or trade secrets must be safeguarded.

2. Evidence which would disclose such secrets may be made available

to the other party only to such an extent as is compatible with the safeguarding of the secrets.

D. Sale or destruction of products or equipment

Art. 69

1. In the event of a conviction, the court may order the forfeiture and sale or destruction of the unlawfully manufactured products or equipment, devices and other means that primarily serve their manufacture.

2. The net proceeds from the sale shall firstly be used for the payment of the fine, then the payment of the investigation and court costs, and finally for the payment of a final unappealable award of damages to the injured party and to cover their litigation costs; any surplus shall go to the former owner of the goods sold.

3. Even in the event of the dismissal of the action or an acquittal, the court may order the destruction of the equipment, devices and other means intended primarily for the infringement of the patent.

E. Publication of the judgment

Art. 70

1. The court may authorise the successful party to publish the judgment at the expense of the opposing party; the court shall determine the form, extent and timing of the publication.

2. In criminal cases (Art. 81–82), publication of the judgment is governed by Article 68 of the Swiss Criminal Code.

F. Notification of judgments

Art. 70a

The courts shall provide the IPI with full official copies of the final judgments free of charge.

G. Prohibition of multi-stage actions

Art. 71

Any person who brings an action under Articles 72, 73, 74 or 81 and

subsequently brings a further action against the same party for the same or a similar act on the basis of another patent must bear the court costs and the other party's costs for the new procedure if he does not provide prima facie evidence that in the prior action he was, through no fault on his part, unable to invoke the other patent.

Section 2 Special Provisions for Protection under Civil Law

A. Action for injunction or remedy

Art. 72

1. Any person who is threatened with or has his rights infringed by an act referred to in Article 66 may demand an injunction or that the unlawful situation be remedied.

2. (Repealed)

B. Action for damages

Art. 73

1 Any person who performs an act referred to in Article 66 either wilfully or through negligence shall be required to pay damages to the injured party according to the provisions of the Code of Obligations.

2. (Repealed)

3. An action for damages may only be brought after the patent has been granted; the defendant may, however, be held liable for loss or damage caused from the time when he first obtained knowledge of the content of the patent application, but at the latest from the publication of the application.

4. (Repealed)

C. Action for declaratory judgment

Art. 74

Any person demonstrating an interest may bring an action to obtain a declaratory judgment on the existence or non-existence of a circumstance or legal relationship governed by this Act, in particular:

1. that a particular patent is valid;
2. that the defendant has performed an act referred to in Article 66;
3. that the plaintiff has not performed any act referred to in Article 66;
4. that a particular patent is not enforceable against the plaintiff by virtue of a legal provision;
5. that with regard to two particular patents, the requirements of

Article 36 for the grant of a licence are or are not fulfilled;
6. that the plaintiff has made the invention, which is the subject-matter of a particular patent application or patent;
7. that a particular patent, which violates the double patenting prohibition, has become invalid.

D. Licensees' right of action

Art. 75
1. Any person who holds an exclusive licence, irrespective of the registration of the licence in the Register, is entitled to bring an action as specified in Articles 72 or 73 independently, provided this is not expressly excluded by the licence agreement.

2. Any licensee may join an action under Article 73 in order to claim their own loss or damages.

Art. 76 (Repealed)

F. Preliminary measures

Art. 77
1. Any person requesting preliminary measures may, in particular, request that the court orders:
a. measures to secure evidence, to preserve the existing state of affairs or to provisionally enforce claims for injunctive relief and remedy;
b. a precise description to be made:
1. of the allegedly unlawful processes used,
2. of the allegedly unlawful products manufactured as well as the means used to manufacture them; or
c. the seizure of these objects.

2. If a party requests a description to be made, it must provide prima facie evidence that an existing claim has been infringed or an infringement is suspected.

3. If the opposing party claims that a manufacturing or trade secret is involved, the court shall take the necessary measures to safeguard it. It may exclude the applicant party from participating in the procedure for making the description.

4. The procedure for making the description, with or without seizure, shall be carried out by a member of the Federal Patent Court, who may call on the assistance of an expert if necessary. It shall be carried out, where necessary, in collaboration with the competent cantonal instances.

5. Before the applicant party is notified of the description, the opposing party shall be given the opportunity to comment.

Art. 78-80 (Repealed)

Section 3 Special Provisions for Protection under Criminal Law

A. Criminal provisions

I. Patent infringement

Art. 81

1. Any person who wilfully commits an act specified in Article 66 is, on complaint by the injured party, liable to a custodial sentence not exceeding one year or to a monetary penalty.

2. The right to file a complaint shall lapse after six months from the day on which the injured party became aware of the identity of the offender.

3. If the offender acts for commercial gain, he shall be prosecuted ex officio. The penalty is a custodial sentence not exceeding five years or a monetary penalty. The custodial sentence shall be combined with a monetary penalty.

II. False information concerning the source

Art. 81a

1. Any person who wilfully provides false information under Article 49a is liable to a fine of up to 100,000 francs.

2. The court may order the publication of the judgment.

III. False patent marking

Art. 82

1. Any person who wilfully offers for sale or distributes his business documents, notices or advertisements of any nature, products or goods bearing a designation that creates the erroneous belief that the products or goods have patent protection is liable to a fine.

2. The court may order the publication of the judgment.

B. Applicability of the general provisions of the Swiss Criminal Code

Art. 83
The general provisions of the Swiss Criminal Code181 apply unless this Act provides otherwise.

B bis. Infringements in businesses

Art. 83a
In the case of infringements within businesses committed by subordinates, agents or representatives, Articles 6 and 7 of the Federal Act of 22 March 1974 on Administrative Criminal Law apply.

C. Place of jurisdiction

Art. 84
1. The competent authorities for the prosecution and judgment of an offence are those of the place where the act was committed or of the place where the act occurred; where more than one place comes into consideration, or where several joint offenders are concerned, the competent authorities are those of the place where the investigation was first commenced.

2. The competent authorities for the prosecution and judgment of instigators and accomplices are those which are competent for the prosecution and judgment of the main offender.

D. Competence of the cantonal authorities

I. In general

Art. 85
1. The prosecution and judgment of an offence is a matter for the cantonal authorities.

2. Judgments, penalty orders issued by administrative authorities and decisions to dismiss proceedings must be communicated without delay, free of charge and with full copies of documents to the Office of the Attorney General of Switzerland.

II. Plea of nullity of the patent

Art. 86

1. If the person under investigation pleads the nullity of the patent as a defence, the court may allow him an appropriate time limit within which to file a nullity action, giving appropriate notice of the penalty for failure to do so; if the patent has not been examined with regard to novelty and inventive step and if the court has any doubt as to the validity of the patent, or if the person under investigation has provided prima facie evidence that the defence of nullity of the patent appears justified, the court may allow the injured party an appropriate period within which to file an action for declaration of the validity of the patent, likewise giving appropriate notice of the penalty for failure to do so.

2. Where the action is raised within the stated period, the criminal proceedings shall be suspended until a final decision on the action has been issued; the limitation period for prosecution is suspended during this time.

3. (Repealed)

Section 4 Assistance Provided by the Customs Administration

A. Notification of suspicious goods

Art. 86a

1. The Customs Administration is authorised to notify the proprietor of a patent that is valid in Switzerland if there is any suspicion that goods that infringe that patent may imminently be brought into or taken out of Swiss customs territory.

2. In such cases, the Customs Administration is authorised to withhold the goods for three working days in order that the person entitled may file an application in accordance with Article 86b paragraph 1.

B. Application for assistance

Art. 86b

1. If the proprietor or a licensee of a patent that is valid in Switzerland entitled to IPI proceedings has clear indications that goods which infringe that patent may imminently be brought into or taken out of Swiss customs territory, he may request the Customs Administration in writing to refuse the release of the goods.

2. The applicant must provide all the information available to him that is necessary for the Customs Administration's decision; this includes a precise description of the goods.

3. The Customs Administration shall make the final decision on the application. It may charge a fee to cover the administrative costs.

C. Withholding of goods

Art. 86c

1. If the Customs Administration, as a result of an application under Article 86b paragraph 1, has grounds to suspect that certain goods intended to be brought into or taken out of Swiss customs territory infringe a patent valid in Switzerland, then it shall notify the applicant and the declarant, holder or owner of the goods accordingly.

2. It shall withhold the goods for a maximum of ten working days from the time of notification pursuant to paragraph 1, so that the applicant

may obtain preliminary measures.

3. Where justified by circumstances, it may withhold the goods for a maximum of ten additional working days.

D. Samples

Art. 86d

1. While the goods are being withheld, the Customs Administration is authorised to hand over or deliver to the applicant, on request, samples for examination or to permit the applicant to inspect the goods being withheld.

2. The samples are collected and delivered at the expense of the applicant.

3. They must be returned after the examination has been carried out, if this is reasonable. If samples are retained by the applicant, they are subject to the provisions of customs legislation.

E. Safeguarding of manufacturing and trade secrets

Art. 86e

1. At the same time as notification is made in accordance with Article 86c paragraph 1, the Customs Administration shall inform the declarant, holder or owner of the goods of the possible handover of samples or the opportunity to inspect them in accordance with Article 86d paragraph 1.

2. The declarant, holder or owner may request to be present at the inspection in order to safeguard his manufacturing or trade secrets.

3. The Customs Administration may refuse to hand over samples on a reasoned request from the declarant, holder or owner.

F. Application for destruction of the goods

I. Procedure

Art. 86f

1. When making an application under Article 86b paragraph 1, the applicant may submit a written request to the Customs Administration to destroy the goods.

2. If an application for destruction is made, the Customs Administration shall notify the declarant, holder or owner of the goods accordingly as part of the notification made under Article 86c paragraph 1.

3. The application for destruction does not result in the time limits for obtaining preliminary measures under Article 86c paragraphs 2 and 3 being extended.

II. Consent

Art. 86g

1. The destruction of the goods requires the consent of the declarant, holder or owner.

2. Consent is deemed to be given if the declarant, holder or owner does not expressly object to the destruction within the time limits given under Article 86c paragraphs 2 and 3.

III. Evidence

Art. 86h

Before the destruction of the goods, the Customs Administration shall remove samples and hold them in safekeeping as evidence in any actions for damages.

IV. Damages

Art. 86i

1. If the destruction of the goods proves to be unjustified, the applicant is exclusively liable for the resultant loss.

2. If the declarant, holder or owner has given express written consent for the destruction, no claims for damages may be made against the applicant if the destruction later proves to be unjustified.

V. Costs

Art. 86j

1. The destruction of the goods is carried out at the expense of the applicant.

2. The costs for collecting and safekeeping samples under Article 86h are decided by the court in connection with the assessment of claims for damages in accordance with Article 86i paragraph 1.

G. Accountability statement and damages

Art. 86k

1. If it is anticipated that withholding the goods may lead to a loss being incurred, the Customs Administration may make the withholding of the goods dependent on the applicant providing them with an accountability statement. As an alternative to this statement and where justified by the circumstances, the Customs Administration may request the applicant to provide appropriate security.

2. The applicant shall be liable for any losses incurred from withholding the goods and from collecting the samples if preliminary measures are not ordered or prove to be unjustified.

Fourth Title

Art. 87-108 (Repealed)

Fifth Title European Patent Applications and European Patents

Section 1 Applicable Law

Scope of the Act; Relation to the European Patent Convention

Art. 109

1. This Title applies to European patent applications and European patents with effect in Switzerland.

2. The other provisions of this Act apply except where the Convention of 5 October 1973196 on the Grant of European Patents (European Patent Convention) or this Title provides otherwise.

3. The text of the European Patent Convention that binds Switzerland takes precedence over this Act.

Section 2 Effects of the European Patent Application and the European Patent and Modifications concerning the Validity of the European Patent

A. Principle Effects

Art. 110

European patent applications for which a filing date has been assigned and European patents have the same effect in Switzerland as patent applications filed in due form with the IPI and patents granted by this Institute.

II. Modifications concerning the validity of the patent

Art. 110a

A modification concerning the validity of a European patent due to a final decision resulting from a procedure before the European Patent Office has the same effect as a final judgment in a procedure in Switzerland.

B. Provisional protection conferred by a European patent application

Art. 111

1. Published European patent applications do not confer on the applicant the protection conferred by Article 64 of the European Patent Convention.

2. However, the injured party may, in an action for damages, claim the loss or damage caused by the defendant from the moment at which the latter became aware of the content of the European patent application, but at the latest from the date of publication of the application by the European Patent Office.

Art. 112-116 (Repealed)

Section 3 Administration of the European Patent

A. Register for European patents

Art. 117

As soon as the mention of the grant of the European patent has been published in the European Patent Bulletin, the IPI shall record it in the Swiss Register of European Patents along with the particulars noted in the European Patent Register.

B. Publications

Art. 118

The Institute shall publish registrations made in the Swiss Register of European Patents.

Art. 119-120 (Repealed)

Section 4 Conversion of the European Patent Application

A. Grounds for conversion

Art. 121

1. The European patent application may be converted into a Swiss patent application:

a. in the case provided for in Article 135 paragraph 1 letter a of the European Patent Convention;

b. in the case of failure to observe the time limit in accordance with Article 14 paragraph 2 of the European Patent Convention, where the original application was filed in Italian;

c. (Repealed)

2. (Repealed)

B. Legal effects

Art. 122

1. Where the request for conversion is filed in due form and sent in good time to the IPI, the patent application is deemed to have been filed on the date of filing of the European patent application.

2. The documents accompanying the European patent application or European patent that were filed with the European Patent Office are deemed to have been filed at the same time with the IPI.

3. The rights attached to the European patent application remain valid.

C. Translation

Art. 123

Where the language in which the original text of the European patent application is written is not an official Swiss language, the IPI shall allow the patent applicant a time limit within which to file a translation in an official Swiss language.

D. Reservation of the European Patent Convention

Art. 124

1. The provisions in force for Swiss patent applications apply to the

patent application arising from the conversion, subject to Article 137 paragraph 1 of the European Patent Convention.

2. The claims of a patent application resulting from the conversion of a European patent may not be drafted in such a way that the extent of protection conferred by the patent is extended.

Section 5 Provisions for Protection under Civil and Criminal Law

A. Prohibition of double patenting

I. Precedence of the European patent

Art. 125

1. Where, for one and the same invention, a Swiss patent and a European patent with effect in Switzerland have been granted to the same inventor or to his successor in title with the same filing or priority date, the Swiss patent has no further effect as from the date on which:
a. the opposition period against the European patent has expired without an opposition being filed; or
b. the European patent has been maintained in opposition proceedings by final decision.

2. Article 27 applies by analogy.

II. Precedence of the patent arising from the conversion

Art. 126

1. Where, for one and the same invention, a patent resulting from a Swiss or international patent application (Art. 131 et seq.) and a patent resulting from a converted European patent application have been granted to the same inventor or to his successor in title with the same filing or priority date, the first patent has no further effect from the date on which the patent resulting from the converted European patent application was granted.

2. Article 27 applies by analogy.

B. Rules of procedure

I. Limitation of partial surrender

Art. 127

A partial surrender of the European patent may not be requested so long as opposition to this patent may be filed with the European Patent Office or a final decision has not yet been taken with regard to an opposition, a limitation or a revocation.

II. Suspension of proceedings

a. Civil litigation

Art. 128

The court may suspend proceedings, and in particular defer judgment where:

a. the European Patent Office has not yet taken a final decision on a limitation or revocation of the European patent

b. the validity of the European patent is disputed and one party provides evidence that opposition may still be filed with the European Patent Office or that a final decision has not yet been taken with regard to an opposition;

c. the European Patent Office has not yet taken a final decision regarding a petition for review of the decision under Article 112a of the European Patent Convention.

b. Criminal procedure

Art. 129

1. If, in the case under Article 86, the person under investigation pleads the nullity of the European patent as a defence, the court may allow him, insofar as opposition to the patent may still be filed with the European Patent Office or intervention in opposition proceedings is still permitted, an appropriate time limit for the filing of opposition or for intervention in opposition proceedings.

2. Article 86 paragraph 2 applies by analogy.

Section 6 Requests for Legal Cooperation by the European Patent Office

Transmitting authority

Art. 130

The Swiss Federal Institute of Intellectual Property shall receive requests for legal cooperation by the European Patent Office and transmit them to the competent authority.

Sixth Title International Patent Applications

Section 1 Applicable Law

Scope of the Act; Relation to the Patent Cooperation Treaty

Art. 131

1. This Title applies to international applications under the Patent Cooperation Treaty of 19 June 1970, for which the IPI acts as Receiving Office, Designated Office or Elected Office.

2. The other provisions of this Act apply except where the Patent Cooperation Treaty or this Title provide otherwise.

3. The text of the European Patent Convention that binds Switzerland takes precedence over this Act.

Section 2 Applications filed in Switzerland

A. Receiving Office

Art. 132

The Institute acts as Receiving Office under Article 2 of the Patent Cooperation Treaty in respect of international applications filed by Swiss nationals or persons having their principle place of business or domicile in Switzerland.

B. Procedure

Art. 133

1. The Patent Cooperation Treaty, supplemented by this Act, applies to the procedure before the IPI acting as Receiving Office.

2. In addition to the fees prescribed by the Patent Cooperation Treaty, the international application shall give rise to the payment of a transmittal fee collected by the IPI.

3. Article 13 does not apply.

Section 3 Applications designating Switzerland; Elected Office

A. Designated Office and Elected Office

Art. 134
The IPI acts as Designated Office and Elected Office under Article 2 of the Patent Cooperation Treaty in respect of international applications which seek protection for an invention in Switzerland, where such applications do not have the effect of a European patent application.

B. Effects of the international application

I. Principle

Art. 135
An international application for which the IPI acts as Designated Office has the same effect in Switzerland as a Swiss patent application filed in due form with the IPI if a filing date has been assigned to it.

II. Right of Priority

Art. 136
The right of priority under Article 17 may also be claimed for an international application if the first application has been filed in Switzerland or only in respect of Switzerland.

III. Provisional protection

Art. 137
Articles 111 and 112 of this Act apply by analogy to international applications published under Article 21 of the Patent Cooperation Treaty for which the IPI is the Designated Office.

C. Formal requirements

Art. 138
Within 30 months of the filing or priority date, the applicant must:
a. provide written confirmation of the name of the inventor;
b. provide information on the source (Art. 49a);

c. pay the filing fee;
d. file a translation in an official Swiss language, provided the international application is not made in such a language.

D.

Art. 139 (Repealed)

E. Prohibition of double patenting

Art. 140

1. Where, in respect of one and the same invention, two patents having the same priority date have been granted to the same inventor or to his successor in title, the patent resulting from the national application ceases to have effect as of the date of the grant of the patent resulting from the international application, irrespective of whether the priority of the national application is claimed for the patent resulting from the international application or whether the priority of the international application is claimed for the patent resulting from the national application.

2. Article 27 applies accordingly.

Seventh Title Supplementary Protection Certificates

Section 1 Supplementary Protection Certificates for Medicinal Products

A. Principle

Art. 140a

1. The Institute shall on application grant a supplementary protection certificate (certificate) for the active ingredients or combination of active ingredients of medicinal products. A certificate will only be issued if no paediatric supplementary protection certificate in accordance with Article 140t paragraph 1 is available.

1bis. An active ingredient is a substance of chemical or biological origin contributing to the composition of a medicinal product which has a medicinal effect on the organism. An active ingredient composition is a combination of several substances, all of which have a medicinal effect on the organism.

2. Active ingredients or combinations of active ingredients are referred to in this Section as products.

B. Conditions

Art. 140b

1. The certificate is granted if, at the time of the application:

a. the product as such, a process for manufacturing it or a use of it is protected by a patent;

b. a medicinal product containing the product is authorised in Switzerland in accordance with Article 9 of the Therapeutic Products Act (TPA) of 15 December 2000.

2. It is granted based on the first authorisation.

C. Right

Art. 140c

1. The proprietor of the patent has the right to the certificate.

2. Only one certificate shall be granted for each product.

3. In the event that two or more proprietors of a patent file appli-

cations for the same product based on different patents and no certificate has yet been granted, the certificate may be granted to each applicant.

D. Subject-matter of protection and effects

Art. 140d

1. The protection of a certificate extends, within the limits of the scope of protection conferred by the patent, to any use of the product as a medicinal product that has been authorised before the expiry of the certificate.

2. The certificate grants the same rights as the patent and is subject to the same restrictions.

E. Term of protection

Art. 140e

1. The certificate takes effect on expiry of the maximum term of the patent for a period equal to the period which elapses between the date of filing under Article 56 and the date of the first authorisation of the medicinal product containing the product in Switzerland, minus five years.

2. It is valid for no more than five years.

3. The Federal Council may specify that the authorisation of a medicinal product containing the product granted in the European Economic Area (EEA) constitutes the first authorisation within the meaning of paragraph 1 if it is granted earlier than the first authorisation in Switzerland.

F. Time limit for filing the application

Art. 140f

1. The application for the grant of a certificate must be filed:
a. within six months of the first authorisation of a medicinal product containing the product in Switzerland;
b. within six months of the grant of the patent if this was granted later than the first authorisation.

2. In the event that the time limit is not met, the IPI shall refuse the application.

G. Grant of the certificate

Art. 140g
The IPI grants the certificate by entering it in the Patent Register.

H. Fees

Art. 140h
1. The certificate is subject to the payment of an application fee and renewal fees.

2. The renewal fees must be paid in advance in one single payment for the full term of the certificate.

3. (Repealed)

I. Premature lapse and suspension

Art. 140i
1. The certificate lapses where:
a. the owner surrenders it by a written declaration to the IPI;
b. the annual fees have not been paid in due time;
c. all authorisations of medicinal products containing the product are recalled (Art. 16a TPA).

2. If all authorisations are suspended, the certificate is also suspended. Suspension does not interrupt the term of the certificate.

3. The Swiss Agency for Therapeutic Products shall notify the IPI of any withdrawal or suspension of the authorisations.

K. Nullity

Art. 140k
1. The certificate is null and void where:
a. it was granted contrary to Article 140b, Article 140c paragraph 2, Article 146 paragraph 1 or Article 147 paragraph 1;
b. the patent lapses before its maximum term expires (Article 15);

c. the patent is declared null and void;
d. the patent is limited to the extent that the product for which the certificate was granted is no longer covered by the claims;
e. after the lapse of the patent, grounds exist which would have justified the declaration of nullity of the patent under letter c or a limitation under letter d.

2. Any person may bring an action to have the certificate declared null and void before the authority responsible for declaring the nullity of the patent.

L. Procedure, Register, publications

Art. 140l
1. The Federal Council shall lay down the procedure for the grant of certificates and for their entry in the Patent Register and the IPI's publications.

2. It shall take account of the regulations of the European Union.

M. Applicable law

Art. 140m
Insofar as the provisions concerning the certificate do not contain any regulations, the provisions of the first, second, third and fifth Titles of this Act apply by analogy.

Section 2 Extension of the Term of Supplementary Protection Certificates for Medicinal Products

A. Requirements

Art. 140n

1. The IPI shall extend the term of protection (Art. 140e) of certificates issued by six months if the authorisation (Art. 9 TPA) of a medicinal product containing the product:

a. contains confirmation that the information on the medicinal product reflects the results of all studies performed in accordance with the paediatric test concept (Art. 11 para. 2 let. a no 6 TPA) considered in the authorisation process; and

b. was applied for no later than six months after the application for initial authorisation in the European Economic Area of a medicinal product containing the product in which the corresponding medicinal product information reflects the results of all studies performed in accordance with the paediatric test concept considered for the authorisation.

2. A certificate's term of protection may only be extended once.

B. Deadline for submitting an application

Art. 140o

1. An application to extend a certificate's term of protection may be made with the application for issuance of a certificate at the earliest and two years before the certificate expires at the latest.

2. If the deadline is not respected, the IPI shall reject the application.

C. Extension of term of protection

Art. 140p

The IPI shall extend the term of protection of the certificate by entering this in the Patent Register.

D. Fee

Art. 140q
A fee shall be paid to extend a certificate's term of protection.

E. Revocation

Art. 140r
1. The IPI may revoke the extension of a certificate's term of protection if this was granted in contravention of Article 140n or if it subsequently contravenes Article 140n.

2. Any person may lodge a request with the IPI for the extension of a term of protection to be revoked.

F. Procedure, register, publications

Art. 140s
1. The Federal Council shall regulate the procedure for extending the terms of protection of certificates, for registering them in the Patent Register and for publication by the IPI.

2. It shall take into account European Union regulations.

Section 2a Paediatric Supplementary Protection Certificates for Medicinal Products

A. Requirements

Art. 140t

1. Upon application the IPI shall issue a paediatric supplementary protection certificate (paediatric certificate) for active ingredients or active ingredient compositions of medicinal products with a protection period of six months from the expiry of the longest term of the patent, provided the authorisation (Art. 9 TPA) of a medicinal product containing the product:

a. contains confirmation that the information on the medicinal product reflects the results of all studies performed in accordance with the paediatric test concept (Art. 11 para. 2 let. a no 6 TPA) considered in the authorisation process; and

b. was applied for no later than six months after the application for initial authorisation in the European Economic Area of a medicinal product containing the product in which the corresponding medicinal product information reflects the results of all studies performed in accordance with the paediatric test concept considered for the authorisation.

2. A paediatric certificate shall only be issued if no supplementary protection certificate in accordance with Article 140a exists.

3. Article 140b paragraph 1 applies mutatis mutandis.

4. The term of protection of a paediatric certificate may not be extended.

B. Claim

Art. 140u

1. The patent holder has a claim to the paediatric certificate.

2. The paediatric certificate shall be issued once only for each product.

3. If however owing to the existence of different patents several

patent holders submit an application for the same product, the paediatric certificate may be issued to each applicant if the addressee's consent is provided with the confirmation in accordance with Article 140t paragraph 1 letter a.

C. Deadline for submitting an application

Art. 140v

1. The application for the grant of a paediatric certificate may be made two years before the end of the maximum term of the patent at the latest.

2. If the deadline is not respected, the IPI shall reject the application.

D. Fee

Art. 140w

A fee shall be paid for the paediatric certificate.

E. Nullity

Art. 140x

1. The paediatric certificate is null and void when:
a. it is issued in contravention of Article 140t or if it subsequently contravenes Article 140t;
b. it is issued in contravention of Article 140u paragraph 2;
c. the patent lapses before the end of its maximum term (Art. 15);
d. the patent is found to be null and void;
e. the patent is limited to such an extent that its claims no longer cover the product for which the paediatric certificate was granted;
f. after the patent has lapsed, there are grounds which would have justified a declaration of nullity under letter d or a limitation under letter e.

2. Any person may bring an action for the paediatric certificate to be declared null and void before the authority competent to declare the patent null and void.

F. Procedure, register, publications, applicable law

Art. 140y

Articles 140a paragraph 1bis and 2, 140d, 140g, 140i, 140l paragraph 1 and 140m apply mutatis mutandis.

Section 3 Supplementary Protection Certificates for Plant Protection Products

Art. 140z

1. The Institute shall on application grant a supplementary protection certificate (certificate) for active ingredients or combination of active ingredients of plant protection products.

2. Articles 140a paragraph 2 and 140b to 140m apply by analogy.

3. Ingredients are substances and microorganisms, including viruses, with a general or specific effect:
a. against harmful organisms;
b. on plants, parts of plants or plant products.

Final Title Final and Transitional Provisions

A. Implementing measures

Art. 141

1. The Federal Council shall take the necessary measures to implement this Act.

2. It may, in particular, enact regulations on the formation of the examining sections and opposition divisions, on the scope of their business and procedures as well as on time limits and fees.

B. Transition from the old to the new law

I. Patents

Art. 142

Patents that have not yet lapsed when the Amendment to this Act of 22 June 2007 comes into force are subject to the new law from that date. Grounds for nullity continue to be governed by the previous law.

II. Patent applications

Art. 143

1. Patent applications that are pending when the Amendment to this Act of 22 June 2007 comes into force are subject to the new law from that date.

2. However, the following are also governed by the previous law:
a. non-prejudicial disclosures at international exhibitions;
b. patentability, if the requirements are more favourable under the previous law.

III. Liability under civil law

Art. 144 (Repealed)

Art. 145

1. Liability under civil law is regulated by the provisions in force at the time of the act concerned.

2. Article 75 and Article 77 paragraph 5 apply only to licence agreements that have been concluded or confirmed after the Amendment to this Act of 22 June 2007 comes into force.

C. Supplementary protection certificates for plant protection products

I. Authorisation prior to entry into force

Art. 146

1. A supplementary protection certificate may be granted for any product which, on the Amendment to this Act of 9 October 1998 coming into force, is protected by a patent and for which an authorisation to place it on the market in accordance with Article 140b was granted after 1 January 1985.

2. The application for the grant of a certificate must be filed within the six months of the Amendment to this Act of 9 October 1998 coming into force. In the event that the time limit is not met, the IPI shall refuse the application.

II. Lapsed patents

Art. 147

1. Certificates may also be granted on the basis of patents that have lapsed at the end of their maximum term between 8 February 1997 and the Amendment to this Act of 9 October 1998 coming into force.

2. The term of protection of the certificate is calculated in accordance with Article 140e; its effects do not begin until the publication of the application for the grant of a certificate.

3. The application must be filed within two months of the Amendment to this Act of 9 October 1998 coming into force. In the event that the time limit is not met, the IPI shall refuse the application.

4. Article 48 paragraphs 1, 2 and 4 apply correspondingly for the time period between the lapse of the patent and the publication of the application.

D. Transitional provisions on the Amendment to the Patents Act of 16 December 2005

Art. 148

1. No translation of the patent specifications under Article 113 paragraph 1 is required for European patents which are not published in one of the official Swiss languages if the mention of the grant of the European patent, or in the case of the maintenance of the patent in amended form the publication of the decision regarding an opposition, or in the case of a limitation of the patent the mention of the limitation has been published in the European Patent Bulletin less than three months prior to the Amendment to this Act of 16 December 2005 coming into force.

2. Articles 114 and 116 also apply after the Amendment to this Act of 16 December 2005 comes into force to translations which have either been sent to the defendant in accordance with Article 112, or made public by the IPI or which have been submitted to the IPI under Article 113.

E. Transitional provisions to the amendment of 18 March 2016 of the Patent Act

Art. 149

1. For a period of five years after the entry into force of the amendment of 18 March 2016 to this Act the application for renewal of the term of protection of a certificate may be submitted no later than six months before its expiry.

2. For a period of five years after the entry into force of this amendment the application for a paediatric certificate may be made at the latest six months before the end of the maximum term of the patent.

3. If the authorisation (Art. 9 TPA299) of a medicinal product containing the product (Art. 140n para. 1 introductory sentence and 140t para. 1 introductory sentence) is applied for within six months of the entry into force of this amendment, then Articles 140n paragraph 1 letter b and 140t paragraph 1 letter b do not apply.

Commencement date: 1 January 1956
Art. 89 para. 2, 90 para. 2 and 3, 91 para. 2 and 3, 96 para. 1 and 3, 101 para. 1, 105 para. 3: 1 October 1959