TABLE OF CONTENTS

PART I GENERAL PROVISIONS

Chapter 1 Relations with the Federal Institute of Intellectual Property
1. Competence
2. Date of Postal Submissions
3. Signature
4. Language
4a. Electronic Communication
4b. Proof
5. More than One Applicant
6. Impossibility of Notification
7. Succession

Chapter 2 Representation
8. Relationship between the IPI and the Agent
8a. Power of Attorney
9. (Repealed)

Chapter 3 Terms
10. Calculation
11. Duration
12. Extension Terms
13. Consequences of Failure to Observe a Time Limit
14. Continuation of the Procedure
15. Restoration to Prior State
16. 

Chapter 4 Fees
17. Regulation on Fees
17a. Types of Fees
18. Annual Fees
18a.
18b.
PART II Requirement

Chapter 1 General
21. Documents Required
22. Correction of Errors

Chapter 2 Requests for the Grant of a Patent
23. Form
24. Contents

Chapter 3 Technical Documents
25. General
26. Description
27. Sequence Listings
28. Drawings
29. Claims
30. Independent Claims
31. Dependent Claims
31a. Claim Fee
32. Form and Content of the Abstract
33. Final Abstract

Chapter 4 Mention of the Inventor
34. Form
35. Time Limit
36. (Repealed)
37. Rectification
38. Renunciation of Mention

Chapter 5 Priority and Immunity Derived from an Exhibition

SECTION 1 PRIORITY
39. Priority Declaration
39a. Priority Declaration with Respect to Domestic Priority
40. Priority Document
41. Additional Priority Documents
42. Multiple Priority
43. Priority in the Case of Divisional Applications
43a. Priority Document Concerning an Initial Filing in Switzerland

SECTION 2 IMMUNITY DERIVED FROM AN EXHIBITION
44. Declaration of Immunity Derived from an Exhibition
45. Requisite Documents

Chapter 6 Indication of Origin of Genetic Resources and Traditional Knowledge
45a.

Chapter 7 Deposit of Biological Material
45b. Deposit Obligations
45c. Recognised Depositary Institutions
45d. Assignment of Deposit Identification Number
45e. Availability of Deposited Biological Material
45f. Access to Biological Material
45g. Declaration of Agreement
45h. Duration of storage
45i. New Deposit of Biological Material
45j. Deposit under the Budapest Treaty

PART III Examination of the Patent Application

Chapter 1 Examination on Filing and Examination as to Form
46. Filing Date
46a. Examination on Filing
46b. Certificate of deposit
46c. Missing parts of the description or missing drawings
46d. Technical Documents as Filed
46e. Divisional Application
47. Examination as to Form
48. Address for Service in Switzerland
48a. Request for the Grant of a Patent
48b. Claims
48c. Abstract
48d. Name of the Inventor
49. Filing Fee
50. Defects as to Form in the Technical Documents
51. Amendments to Technical Documents
Chapter 2 Report on the State of the Art

Section 1 Request by the Applicant
53. Request and Payment of the Search Fee
53a. Claim Fees
54. Basis for the Report on the State of the Art
54a. Sequence Listings
55. Content of the Report on the State of the Art
56. Incomplete Searches on the State of the Art
57. Lack of Unity
58. Transmittal of the Report on the State of the Art

Section 2 Request by a Third Party
59. Request and Payment of the Search Fee
59a. Basis for the Report on the State of the Art
59b. Content of the Report on the State of the Art
59c. Transmittal of the Report on the State of the Art

Chapter 3 Publication of the Patent Application
60. Purpose and Form
60a. Language
60b. Early Publication
60c. No Publication
61. (repealed)

Chapter 4 Examination as to Substance

Section 1 General Provisions
61a. Examination fee and claim fees
62. Postponement of Examination as to Substance
62a. Postponement of Examination as to Substance in the Event of a Domestic Priority Claim
63. Rapid Procedure
64. Amended Technical Documents
65. Divisional application filing date
66. Classification

Section 2 Purpose and Completion of Examination
67. Procedure
Chapter 5 Preparation of Grant of the Patent
70. (Repealed)
71. (Repealed)
72. Delaying Period

Chapter 6 Opposition Procedure
73. Form and Content
74. Examination of the Opposition
75. Language
76. Parties
77. Address for Service of the Parties
78 Multiple Oppositions
79. Number of Copies and Annex Documents
80. Rebuttal of the Opposition
81. Amendment of the Patent
82. Exchange of Statements
83. Opinion of the Ethics Committee
84. Oral Hearing
85. Final Decision
86. Opposition fees and Costs
87. Registration and Publication
88. Applicable Law

PART IV Patent Files and Register, and IPI Publications

Chapter 1 File
89. Contents
90. Inspection of Documents
91. (Repealed)
92. Keeping of Documents

Chapter 2 Patent Register
93. Keeping of the Register
94. Contents of the Register
95. Consultation and Extracts from the Register

Chapter 3 Modifications
SECTION 1 MODIFICATIONS AFFECTING THE EXISTENCE OF THE PATENT
96 Partial Renunciation
97
98
98a
99. Limitation by the Court
100 Constitution of New Patents
101
102

SECTION 2 MODIFICATIONS AFFECTING THE RIGHT TO THE GRANT OF A PATENT
AND THE RIGHT TO THE PATENT; CHANGES OF AGENT
103. Partial Allowance of an Action for Assignment
104. Mention in the File
105. Provisional or Final Recording in the Patent Register
106. Cancellation of Third-Party Rights
107. Changes of Agent

Chapter 4 IPI Publications
108. Publication Organ

PART V Restrictions to Patent Rights

Chapter 1 Agricultural Exemption
110. List of plant species

Chapter 2 Compulsory licence for exportation of pharmaceutical products
111. Content of Legal Proceedings
111a. Measures used to Identify Products
111b. Licence Holder Disclosure Obligation
111c. IPI Obligation to Inform and Notify

PART VI Intervention of the Customs Administration
112. Scope of the application
112a. Intervention Request
112b. Seizure of Goods
112c. Samples
112d. Protection of Manufacturing and Trade Secrets
112e. Conservation of Evidence in the Event of Destruction of the
Goods
112f. Fees
113. (Repealed)

PART VII European Patent Applications and European Patents
114. Scope of the Ordinance
115. Filing with the IPI
116. (Repealed)
117. Register and File
117a. Patent Marking
118. Transformation
118a. Annual Fees

PART VIII International Patent Applications

Chapter 1 Scope of the Ordinance
119. Scope of the Ordinance

Chapter 2 The IPI as Receiving Office
120. Filing of the International Application
121. Transmittal Fee and Search Fee
122. Other Fees
122a. (Repealed)
122b. Restitution of Right of Priority

Chapter 3 The IPI as designated Office
123. Provisional protection
124. Conditions for the start of the national phase
125. Restitution of Priority Right

Chapter 4 The IPI as Elected Office
125a. Translation of Annexes to the International Preliminary Examination Report
125b. Content and Consultation of Files
125c. Restitution of Priority Right

PART IX International Searches
126. Condition
127. Procedure

PART X SUPPLEMENTARY PROTECTION CERTIFICATES FOR MEDICINE and
CHAPTER 1 Scope of Application

Chapter 2 Application for Certificate

127a. Application; Fee
127b. Content of the Request
127c. Publication of a Notice of Application

Chapter 3 Examination of Application

127e. Examination on Filing of the Application
127f. Examination of the Conditions for Issuing a Certificate

Chapter 4 Grant of Certificate

127g. Grant

Chapter 5 Publication of Rejection of the Application for a Certificate, of the Premature Lapse of the Certificate, of its Invalidity or of its Suspension

127h. Publication

Chapter 6 File and Register

127i. File
127j. Register

Chapter 7 Fees

127l. Annual Fees
127m. Refund of Annual Fees

PART XI FINAL PROVISIONS

Chapter 1 Repeal of Existing Law

128. Repeal

Chapter 2 Transitional Provisions

129. Terms
130. Fees
131. Applications for Patents of Addition
132. Mention of the Inventor
133. Priority
134. Consultation of Files

Chapter 3 Entry into Force
135.
PART I GENERAL PROVISIONS

Chapter 1 Relations with the Federal Institute of Intellectual Property

1. Competence
(1) The Federal Institute of Intellectual Property (IPI) shall carry out the administrative tasks arising out of the Law.

(2) The Federal Customs Administration is responsible for executing Articles 86a to 86k of the Law and Articles 112 to 112f of this Ordinance.

2. Date of Postal Submissions
(1) For material sent by mail from Switzerland, the mailing date shall be regarded as the date of submission. Proof thereof shall be constituted by the postmark affixed by the post office of consignment, or by the postmark of the receiving post office where that of the post office of consignment is missing or illegible; if the postmark of the receiving post office is also missing or illegible, the date of receipt of the material by the IPI shall be regarded as the date of submission. The sender shall be allowed to prove an earlier date of submission.

(2) For material sent by mail from abroad, the date to be taken into consideration shall be that of the first postmark affixed by a Swiss post office; if that postmark is missing or illegible, the date of receipt of the material by the IPI shall be regarded as the date of submission. The sender shall be allowed to prove an earlier date of receipt by a Swiss post office.

3. Signature
(1) Documents must be signed.

(2) If a document is not lawfully signed, the date on which it was submitted is recognised on the condition that a signed document with identical content is provided within one month following direction by the IPI.

(3) The request for the grant of a patent (Article 24) or the request for grant of a certificate (Article 127c) does not have to be signed. The IPI may specify other documents which do not need to
be signed.

4. Language

(1) Written matter sent to the IPI shall be in German, French, or Italian (official languages).

(2) The official language chosen by the applicant at the time of filing shall be the language in which the procedure takes place.

(3) The language originally chosen for the drafting of the technical documents shall be maintained. Changes made to those documents in another language shall not be allowed. This rule shall apply also to partial renunciation (Article 24 of the Law).

(4) Where other written matter is not submitted in the language adopted for the procedure, a translation into that language may be required.

(5) Documents submitted as proof that are not in an official language shall not be taken into consideration unless they are accompanied by a translation into an official language. Articles 40 (2), 45 (3), and 75 (4) are reserved.

(6) Where a translation of a document has to be produced and there are doubts about accuracy, the IPI may require that the accuracy of the translation be certified within a term specified for the purpose. They shall disclose the reason for the doubts. If such certification is not submitted, the document shall be regarded as not having been filed.

(7) Where the documents relating to a divisional application (Article 57 of the Law), to a request for the constitution of a new patent (Articles 25, 27 and 30 of the Law), or to a patent application claiming a priority right based on an initial Swiss application (domestic priority, Article 17 (1ter) of the Law) are not written in the same official language as the previous patent application or the initial patent, the IPI shall allow the patent applicant or the patent owner a period of time during which a translation into that language may be submitted.
4a. Electronic Communication
(1) The IPI may authorise electronic communication.

(2) It shall determine the technical terms and shall publish them as appropriate.

4b. Proof
(1) In case of doubts about accuracy of a document, the IPI can require evidence to be produced.

(2) The IPI shall communicate the reason for its doubts to the applicant, offering the applicant the opportunity to respond and allow a time limit to produce the proof required.

5. More than One Applicant
(1) Where two or more persons are joint owners of a patent application, they shall designate from among themselves the person to whom the IPI may send all communications, such communications being applicable to all of them, or shall appoint a common agent.

(2) Where neither of these conditions is met, the person mentioned first in the application shall be regarded as the recipient of communications within the meaning of subsection (1). Where one of the other persons raises an objection, the IPI shall invite all those concerned to act in accordance with subsection (1).

6. Impossibility of Notification
When the applicant, holder, or agent cannot be notified of an official decision it shall be published.

7. Succession
In the event of the death of the applicant, the IPI shall give the heirs known to it a term within which to settle the matter of the succession to the patent application; it may extend this term as appropriate.

Chapter 2 Representation

8. Relationship between the IPI and the Agent
(1) Insofar as the patent applicant or the patent owner has an agent, the IPI shall only send communications to the latter.
(2) The IPI shall accept communications from a patent applicant or patent owner that is represented.

8a. Power of Attorney
If the patent applicant or the patent owner is represented or needs to be represented under the law, the IPI may require a written power of attorney.

9. (Repealed)

Chapter 3 Terms

10. Calculation
(1) Time limits shall be calculated in accordance with the Federal Law on Administrative Procedure dated December 20, 1968.

(2) Where a time limit is expressed in months or in years, the time limit shall end on the same day of the last month or last year, as the day from which the period of time began. Or if such a date does not exist that year, the last day of the last month.

(3) Where a time limit starts on the priority date and where more than one priority is claimed, the earliest priority date shall be decisive.

11. Duration
(1) The terms set in the course of the examination procedure shall be determined in relation to the probable amount of work of the applicant. They shall be not less than two months and not more than five months.

(2) (Repealed)

12. Extension Terms
(1) Terms of a duration specified in the Law or in this Ordinance may not be extended.

(2) The other time limits shall be extended: The person requesting extension produces sufficient reasons prior to the expiration of the term.
(3) A term shall not be suspended by requests for further details, except where the reply from the IPI implies the contrary.

(4) (Repealed)

13. Consequences of Failure to Observe a Time Limit

(1) Failure to observe a time limit shall cause the application to be rejected by the IPI, except where the Law or this Ordinance provides for other consequences.

(2) Any communication that specifies a time limit shall indicate the consequences of failure to observe that time limit.

(3) Failure to observe a time limit may only have consequences that have been indicated.

14. Continuation of the Procedure

(1) Continuation of procedure (Article 46a of the Law) shall not be allowed if the following time limits have not been complied with:
   (a) the time limit for remedying the absence of a signature (Article 3);
   (b) time limits for submitting and correcting priority declarations (Article 39 (2) and (3), and Article 39a (2) and (3);
   (c) the time limits for depositing biological material and stating the reference number (Article 45b and 45d);
   (d) time limits to be observed for examination on filing and examination as to form (Article 46 to 52);
   (e) time limit for paying the search fee (Article 53);
   (f) time limit for paying the claim fee (Article 53a (1), and Article 61a (2));
   (g) time limit for requesting postponement of examination (Article 62, (1) and (3), and Article 62a (1));
   (h) time limits for paying the transmittal fee, the search fee and the international fee (Articles 121 and 122);
   (i) time limits for submitting an international-type search request (Article 126 (2));
   (j) time limit for requesting refund of annual fees (Article 127m, (6));
   (k) time limit for communicating the reason for payment (Article 5 (2) Regulation dated April 28, 1997 on the Fees Charged by the IPI, hereafter IPI-RT);
(1) time limit for restoring coverage of the current account (Article 7, (3), IPI-RT).

(2) If one of these conditions is not met, the request for continuation of the procedure shall be rejected. Before rejecting the request, the IPI must give the appellant the opportunity to respond to the proposed rejection within a reasonable time.

15 Restoration to Prior State
a. Form and Contents of the Application
(1) The request for restitutio in integrum (Article 47 of the Law) shall be submitted in writing. It shall contain a statement of the facts on which it is based. The omitted act shall be carried out in full within the time limit prescribed for submitting the request. If one of these conditions is not complied with, the request for restitutio in integrum shall be declared inadmissible.

(2) The restoration fee shall be paid.

16
b. Examination of the Request
(1) If the restoration fee has not been paid at the time of filing the request, the IPI shall allow the applicant an additional period in which to make payment.

(2) If the facts stated in support of the request are not substantiated, the IPI shall allow the applicant a period in which to correct this defect. If the reasons provided are insufficient, the request will be rejected. Before rejecting the request, the IPI must give the appellant the opportunity to respond to the proposed rejection within a reasonable time.

(3) If the request is accepted, the restoration fee may be repaid to the applicant either in full or in part.

Chapter 4 Fees

17. Regulation on Fees
The amount of the fees laid down by the Law and by this Ordinance, together with the procedure for their payment, shall be laid down in IPI-RT.
17a. Types of Fees
(1) To obtain or maintain a patent, the following fees shall be paid:
(a) a filing fee;
(b) a claim fee;
(c) an examination fee;
(d) (Repealed)
(e) annual fees.

(2) (Repealed)

18. Annual Fees
a. Due Date in General
(1) For any patent application or any patent, the annual fees shall be paid in advance for each year as of the beginning of the fourth year following the filing of the application.

(2) Annual fees shall become due on the last day of the month in which the filing date has been assigned to the patent application.

(3) The annual fees shall be paid on the last day of the six months following their due date at the latest; a surcharge shall be levied if payment is made after the last day of the third month following the due date.

18a.
b. Due Date for Divisional Applications and the Constitution of New Patents
(1) For an application resulting from the division of a previous patent application, the amount and due date of annual fees shall be determined by the filing date referred to in Article 57 of the Law.

(2) For a newly constituted patent (Articles 25(2), 27 and 30 of the Law), the amount and due date of annual fees shall be determined by the filing date of the initial patent.

(3) The annual fees due on the filing date of the divisional application or of the request for constitution of a new patent shall be paid within six months of that date; a surcharge shall be levied if payment is made during the last three months.
c. Failure to Comply with a Time Limit for Payment

(1) A patent application for which a due annual fee has not been paid in time shall be rejected. A patent for which a due annual fee has not been paid in time shall be struck off the Register.

(2) The IPI shall cancel the patent with effect from the due date of the annual fee not paid; where the patent has not been granted until after such date, it shall be cancelled with effect from the date of its grant. The owner shall be informed of the cancellation.

d. Early Payment

(1) Annual fees may not be paid more than two months before their due date.

(2) If the IPI cancels a patent, it shall refund any annual fee that has not yet become due.

e. Reminders

The IPI shall draw the attention of the patent applicant or owner to the fact that the annual fee will become due and shall inform him of the time limit for payment and of the consequences of failing to comply with that time limit. At the request of the patent applicant or owner, the IPI may also address notifications to third parties who regularly make payments on behalf of the applicant or the patent owner. No notifications shall be sent abroad.

20. Repayment

When a patent application is entirely withdrawn or rejected, the IPI shall refund the following fees:

(a) any annual fee paid in advance and not yet due;
(b) (Repealed)
(c) the search fee in accordance with Articles 54(4);
(d) the examination fee, if the IPI has not yet begun the substantive examination.
PART II Requirement

Chapter 1 General

21. Documents Required
All persons wishing to obtain a patent shall produce the following documents:
(a) the request for the grant of a patent;
(b) the description of the invention;
(c) at least one claim;
(d) the drawings to which the application refer.
(e) the abstract;
(f) the name of the inventor;
(g) the priority document, if any.

22. Correction of Errors
(1) Errors in meaning or transcription and errors contained in the application documents may be corrected on request or ex officio; Articles 37 and 52 are reserved.

(2) Correction of the description, claims or drawings shall not be allowed unless it is obvious that the incorrect part had no other possible meaning.

Chapter 2 Requests for the Grant of a Patent

23. Form
The request shall be submitted on the approved form by the IPI.

24. Contents
(1) The request shall contain the following particulars:
(a) the request for the grant of a patent;
(b) the title of the invention (Article 26 (1));
(c) the surname and given name or company name, the address for service or headquarters and the address of the applicant;
(d) an inventory of the documents submitted;
(e) (Repealed)

(2) The request shall also contain:
(a) where the applicant does not have an address or headquarters in Switzerland, an address for service in Switzerland;
(a bis) where the applicant has a representative, their name, address, and an address for service in Switzerland, if any;
(b) where there are two or more applicants, the designation of the addressee;
(c) where the application is a divisional application, its designation as such and the number of the previous application and the filing date claimed;
(d) when priority is claimed, the declaration of priority (Article 39);
(e) when immunity derived from an exhibition is alleged, a declaration to that effect (Article 44).

Chapter 3 Technical Documents

25. General

(1) The description of the invention, the claims, drawings and the abstract shall constitute the technical documents. The beginning of each of these parts shall appear on a new sheet.

(2) The technical documents shall be produced in triplicate.

(3) They must be capable of being reproduced directly and electronically, particularly by scanning. The sheets must not be folded and only one side of them shall be used.

(4) They shall be submitted on light, white, smooth, matt, durable paper of A4 format (21 x 29.7 cm).

(5) The pages of the text shall leave an empty margin on the left-hand side of at least 2.5 cm; the other margins should be 2 cm.

(6) All the sheets shall be numbered in Arabic numerals.

(7) The pages shall be typewritten or printed. Symbols and other signs and chemical or mathematical formulae may be written by hand or drawn. The spacing between lines must be at least 1. The type face shall be chosen in such a way that the capital letters are at least 0.21 cm high. The type must be indelible.

(8) The description, claims and abstract shall not contain any drawings.
(9) Units of measurement shall be expressed in accordance with Ordinance on Units dated November 23, 1994; other units of measurement may be used for additional information. In the case of mathematical and chemical formulae, the symbols generally accepted in the field concerned should be used.

(10) In general, use shall be made only of technical terms, signs and symbols that are generally accepted in the field concerned. The terminology and signs used in the patent application shall be uniform.

(11) In so far as the IPI accepts that the technical documents may be sent to it by electronic means (Article 4a), it can define requirements which deviate from those stated in the present chapter; and shall publish them as appropriate.

26. Description
(1) The description shall begin with a title that is a clear and concise technical designation of the invention. The title shall not contain any fanciful denomination. The final title is set by the office.

(2) (Repealed)

(3) The introduction shall set out the invention in terms that allow the technical problem and its solution to be understood.

(4) The description shall contain a list of the figures included in the drawings and shall indicate briefly the contents of each figure.

(5) It shall contain at least one example of the execution of the invention, except where it is sufficiently described in another manner.

(6) Insofar as this is not evident, the description shall explain how the subject matter of the invention may be used industrially.

(7) (Repealed)

(8) (Repealed)
27. Sequence Listings
(1) When nucleotide or amino acid sequence listings are stated in the patent application, the description must contain a sequence listing drawn up in accordance with standard set out in Annex C of the Administrative Instructions under the Patent Cooperation Treaty (PCT) of June 19, 1970.

(2) A sequence listing submitted after the filing date does not form part of description.

28. Drawings
(1) The usable surface of the sheets containing drawings shall not exceed 17 x 26.2 cm, or be framed.

(2) The drawings shall be executed in indelible, even and well-defined lines, without colours or washes; they must permit direct printing or electronic reproduction.

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

(4) The scale of the drawings and their graphical execution shall be such that photographic or electronic reproduction would enable all details to be distinguished without difficulty. If the scale is given on a drawing, it shall be represented graphically; other indications of size shall in general not be allowed.

(5) Numbers, letters and reference marks appearing on the drawings shall be simple and clear.

(6) The reference signs used on the drawings shall correspond to those used in the description and claims.

(7) If necessary, the elements of a figure may be represented on several sheets, on condition that the whole figure may be readily assembled by placing the sheets side by side.

(8) The different figures shall be clearly separated from one another, and arranged without wasting space. They shall be numbered consecutively in Arabic numerals, independently of the numbering of the sheets.
(9) The drawings shall not contain any textual matter; only short terms or keywords when required for the understanding of the drawings, and these in the same language as the application shall be allowed.

29. Claims
(1) The claims shall indicate the technical characteristics of the invention.

(2) The claims shall be drafted as clearly and concisely as possible.

(3) They shall be arranged in a systematic, clear and logical manner.

(4) In general, they shall not contain references to the description or to the drawings or, in particular, expressions like “as described in part … of the description” or “as illustrated in figure … of the drawings.”

(5) The reference marks which, in the drawings refer to the technical characteristics of the invention shall be repeated between brackets in the claims if the understanding of the claims is thereby facilitated. They shall not have the effect of limiting the claims.

(6) The claims shall be numbered consecutively in Arabic numerals.

30. Independent Claims
(1) Where a patent application contains more than one independent claim, of the same or different categories (Article 52 of the Law), the technical link expressing the general inventive concept should transpire from the claims themselves.

(2) This condition shall be deemed met, in particular, where the patent application contains one of the following combinations of independent claims:
(a) in addition to a first claim for a process: a claim for a means of implementing that process, a claim for the product resulting therefrom, and a claim for either an application of the process or a use of the product;
(b) in addition to a first claim for a product: a claim for a process for the manufacture of that product, a claim for a means of
implementing the process and a claim for the use of the product;
(c) (Repealed)

31. Dependent Claims
(1) A dependent claim shall refer to at least one previous claim and contain the characteristics identifying the special form of execution that constitutes its subject matter.

(2) A dependent claim may refer to more than one previous claim on condition that such claims be clearly and exhaustively enumerated.

(3) All the dependent claims shall be grouped together in a clear manner.

31a. Claim Fee
The 10 first claims made in a patent application are free from fees; a claim fee is due for each additional claim.

32. Form and Content of the Abstract
(1) The abstract shall contain technical information making it possible to assess whether there is a need to consult the application specification or patent specification.

(2) The abstract shall contain a summary of the invention described and should state the main uses of the invention.

(3) Where the technical documentation contains chemical formulae for characterising the invention, at least one of those formulae must be given in the abstract; its symbols must be explained.

(4) Where the technical documentation contains drawings needed to characterise the invention, at least one of those drawings should be designated for inclusion in the abstract; the most important reference signs given in that drawing will be shown in the abstract.

(5) Any figure selected must be capable of being reproduced by photographic or electronic means such that all details to be distinguished without difficulty, even when reduced in size.

(6) The abstract shall not contain more than 150 words.
33. Final Abstract
(1) The final wording of the abstract shall be decided upon ex officio.

(2) (Repealed)

Chapter 4 Mention of the Inventor

34. Form
(1) The name of the inventor shall be mentioned in a separate document stating the surname, given name and address of the inventor;

(2) It is not necessary when information referenced in subsection (1) already appears in the application.

35. Time Limit
(1) If the name of the inventor is not produced at the same time as the application, it may be filed within a period of 16 months from the filing date or priority date.

(2) The IPI shall allow an applicant who files a divisional application (Article 57 of the Law) a period of two months within which to produce the name of the inventor, insofar as the time limit provided for in subsection (1) does not expire later.

(3) If the name of the inventor is not produced in good time, the IPI shall reject the patent application.

36. (Repealed)

37. Rectification
(1) The patent applicant or owner may request correction of the inventor name. Such request shall be accompanied by a declaration of the consent of the person wrongly mentioned as the inventor.

(2) If the person wrongly mentioned as the inventor has already appeared in IPI publications, or has been registered in the Patent Register, the rectification shall also be registered and published.

(3) Once produced, the name of the inventor shall not be returned.
38. Renunciation of Mention

(1) The renunciation by the inventor of a mention in the Patent Register and in IPI publications shall be taken into consideration only if the applicant files a declaration of renunciation made by the inventor with the IPI, within 16 months of the filing date or the priority date.

(2) The declaration of renunciation shall contain the patent application reference number, be dated and shall bear the signature of the inventor.

(3) If the declaration of renunciation is not written in an official language or in English, a translation into one of these languages must be enclosed.

(4) The declaration of renunciation meeting the requirements and the mention of the inventor shall be filed separately; the existence of these documents shall be recorded in the file.

Chapter 5 Priority and Immunity Derived from an Exhibition

SECTION 1 PRIORITY

39. Priority Declaration

(1) The priority declaration shall include the following particulars:
   (a) the date of the first filing;
   (b) the country in which or in respect of which the filing was made;
   (c) the filing reference number.

(2) The priority declaration, shall be submitted with the request for the grant of a patent. This must be filed within 16 months of the oldest priority date claimed. If such time limit is not complied with, the priority right shall lapse.

(3) The applicant may correct the priority declaration within 16 months of the oldest priority date claimed or, in the event that the correction results in a modification of this date, within 16 months of the oldest corrected priority date if this period has expired; the correction may be submitted before the expiry of a period of 4 months as from the filing date.
39a. Priority Declaration with Respect to Domestic Priority

(1) For the priority declaration, it shall be sufficient to state the number of the initial application in the request for the grant of a patent.

(2) The priority declaration must be filed within 16 months of the oldest priority date claimed. If such time limit is not complied with, the priority right shall lapse.

(3) Article 39 subsection (3) is applicable.

40. Priority Document

(1) The priority document shall include:
   (a) a copy of the technical documents of the initial application, the conformity of which with the original documents shall be certified by the authority with which the first application was filed.
   (b) a certificate from that authority attesting to the filing date of the initial application.

(2) If the document is written neither in a Swiss official language nor in English, a translation shall be produced into one of those languages.

(3) If the priority document has to serve for more than one patent application, it shall be sufficient to file it for one patent application and refer to it in good time for the others. Reference to the priority document shall have the same effect as its actual filing.

(4) The priority document shall be produced within a period of 16 months as from the priority date. Failure to comply with this time limit shall cause the priority right to lapse.

(5) The certification referred to in subsection 1a shall not be required when the initial filing took place or produced its effects in one of the countries that grants reciprocity to Switzerland; the right of the IPI to demand certification for the purposes of the examination as to substance is reserved.
(5 bis) It is not necessary to produce a priority document, or where necessary a translation of this document into an official language within the meaning of subsections (1) and (2) if the IPI has access to these documents in an electronic database which it accepts for this purpose.

(6) Where the patent application claims a domestic priority, reference to the initial patent application number shall have the same effect as production of the priority document.

41. Additional Priority Documents
If it is apparent from the priority document that the application on which the priority claimed is based constitutes only in part a first application within the meaning of the Paris Convention for the Protection of Industrial Property of March 20, 1883, the IPI may demand the provision of such documents relating to prior applications as are necessary to clarify the facts.

42. Multiple Priority
(1) Where separate applications for protection have been filed for more than one invention, those inventions being then grouped in Switzerland in a single patent application, as many priority declarations as there were applications may be filed, subject to the conditions specified in Article 17 of the Law.

(2) Subsection (1) shall also apply where domestic priority is claimed.

43. Priority in the Case of Divisional Applications
(1) In the case of a divisional application (Article 57 of the Law), a validly claimed priority for the initial application shall also apply for a divisional application insofar as the applicant does not renounce his priority right in writing. Article 57(2) of the Law shall remain unaffected.

(2) Where more than one priority has been claimed (Article 42), the applicant shall specify the priorities that relate to the divisional application.

(3) The Institute shall allow the applicant a period of two months within which to produce the priority document (Article 40), insofar as the time limit provided for in Article 40(4) does not expire later.
(4) Subsections (1) and (2) shall also apply where a domestic priority is claimed.

43a. Priority Document Concerning an Initial Filing in Switzerland

(1) On request, the IPI shall produce a priority document for the initial filing in Switzerland. The technical documents as filed (Article 46d) shall be decisive.

(2) The IPI shall produce a priority document as soon as possible following definitive assignment of the filing date when it can no longer be amended under Article 46c subsections (2) and (5).

SECTION 2 IMMUNITY DERIVED FROM AN EXHIBITION

44. Declaration of Immunity Derived from an Exhibition

(1) The declaration of immunity derived from an exhibition (Article 7b(b) of the Law) shall include the following particulars:
   (a) the exact designation of the exhibition;
   (b) a declaration concerning the actual presentation of the invention.

(2) It shall be produced with the application for the grant of a patent, failing which the immunity derived from the exhibition shall lapse.

(3) Article 43(1) and (2) shall apply mutatis mutandis to divisional applications.

45. Requisite Documents

(1) The documents concerning the immunity derived from an exhibition shall be filed within four months following the date of filing.

(2) These documents shall have been issued in the course of the exhibition by the competent authority and shall contain the following particulars:
   (a) a certificate attesting that the invention actually was displayed;
   (b) the opening date of the exhibition;
   (c) the date of the first disclosure of the invention where it does not coincide with the opening date;
   (d) a document, authenticated by the above-mentioned authority, whereby the invention may be identified.
(3) If these documents are not written in either an official language or English, a translation into one of these languages shall be filed.

(4) Article 43(3) shall apply mutatis mutandis to divisional applications.

Chapter 6 Indication of Origin of Genetic Resources and Traditional Knowledge

45a.
(1) The invention description names the origin of the genetic resources and traditional knowledge within the meaning of Article 49a of the Law.

(2) The term origin within the meaning of subsection (1) means, in particular:
(a) the country providing the genetic resources within the meaning of Articles 2 and 15 of the Convention on Biological Diversity dated June 5, 1992;
(b) the multilateral system within the meaning of Article 10 (2), of the International Treaty on Plant Genetic Resources for Food and Agriculture dated November 3, 2001;
(c) local and indigenous communities within the meaning of Article 8j, of the Convention on Biological Diversity dated June 5, 1992;
(d) the country of origin of the genetic resources within the meaning of Article 2 of the Convention on Biological Diversity dated June 5, 1992;
(e) ex-situ sources such as gardens or gene banks;
(f) scientific literature.

Chapter 7 Deposit of Biological Material

45b. Deposit Obligations
Where an invention involves biological material or includes manufacture or use of biological material that is not available to the public, and where a description is not sufficient for a person skilled in the art to carry it out, it is regarded as disclosed in accordance with Articles 50 and 50a of the Law when:
(a) a sample of the biological material has been deposited with a recognised depositary institution on the filing date, or if a priority is claimed, on the priority date;
(b) the description contains, on filing date, information held by
the applicant regarding the key characteristics of the biological
material; and
(c) the patent application includes the name of the depositary
institutions and the reference number for the biological material
that has been deposited.

45c. Recognised Depositary Institutions
(1) Recognised depositary institutions are international depositary
institutions which have acquired their status in accordance with
Article 7 of the Budapest Treaty on the International Recognition of
the Deposit of Microorganisms for the Purposes of Patent Procedure
(Budapest Treaty) adopted on April 28, 1977.

(2) The IPI may recognise other organisations as depositary
institutions provided that they guarantee storage and furnishing of
the samples in accordance with the present ordinance, that they are
scientifically recognised, and that they are independent and not
bound to the applicant or the depositor legally, economically or by
organisational links.

(3) The IPI has a list of recognised depositary institutions.

45d. Assignment of Deposit Identification Number
(1) When it is possible to establish the relation between the patent
application and the biological material deposited, the depositor can
give a reference number to the deposit within 16 months of the date
of filing or, if a priority was claimed, the priority date.

(2) The time period for assigning a reference number expires one
month at the latest after the depositor has stated that there is a
right of consultation of the file, or that they have requested early
publication of the patent application.

45e. Availability of Deposited Biological Material
(1) As from the date of filing and for the duration of the storage
referred to in Article 45h, the applicant makes the deposited
biological material unconditionally and irrevocably at the disposal
of the depositary institution, for the purpose of furnishing samples
(Article 45f).
(2) The applicant shall make a new deposit or has appoint a third party for this purpose if necessary under the terms of Article 45i.

(3) Where the deposit is made by a third party, the applicant must produce supporting documents certifying that the depositor has made the biological material available in accordance with subsections (1) and (2).

45f. Access to Biological Material

(1) The depositary institution shall make the biological material accessible to all persons by furnishing samples on request.

(2) Access to biological material must be requested via the IPI. The IPI shall send a copy of the request to the depositary institution and to the patent applicant or patent holder and to the depositor where the deposit was made by a third party.

(3) Before publication of the application specification (Article 60), the following parties are authorised to obtain samples:
   (a) the depositor;
   (b) any person who is in a position to prove that the applicant has alleged violation by them of the rights deriving from his patent application or that he has warned them against such violation;
   (c) any person who can prove that they have authorisation from the depositor.

(4) Samples are furnished to all persons who submit a request after the application specification publication date. Until the grant of the patent for which the biological material deposit was made available in accordance with Article 45e, access to the aforementioned material is limited, at the request of the depositor, with a sample being given to an independent expert nominated by the applicant.

(5) In the event of rejection or withdrawal of the application for which the biological material deposit was made available in accordance with Article 45e, access to the aforementioned material subject to subsection (3) and (4) is limited, at the request of the depositor and for 20 years after the filing date of the patent application, with the sample being given to an independent expert nominated by the applicant.
(6) The depositor shall submit the requests mentioned in subsections (4) and (5) to the IPI within 17 months of the filing date or the priority date.

(7) Any physical person may be nominated as an expert if they are:
(a) recognised as such by the IPI;
(b) agreed upon by both the applicant and the depositor.

45g. Declaration of Agreement
(1) To have access to the samples, the requesting party must pledge, with respect to the patent applicant or patent holder and, when the deposit was made by a third party, with respect to the depositor also, during the period of validity of exclusive right relating to the deposited biological material, not to make available samples of the deposited biological material or derived material to any third parties, and to only use the samples for experimental purposes.

(2) The patent applicant or holder and, where the deposit was made by a third party, the depositor, may waive the requirement for the requesting party to make agreement.

(3) If a sample is deposited with an independent expert, this expert must make a statement to the effect that they accept the agreement referred to in subsection (1). With respect to the expert, the requesting party is considered a third party within the meaning of subsection (1).

(4) The requesting party is not required to agree to only use the biological material for experimental ends if it is used for an operational purpose resulting in a compulsory licence.

45h. Duration of storage
The deposited biological material shall be stored for a period of at least 5 years after the most recent request for the furnishing of a sample of the deposited biological material was received and, in any case, for a period of at least five years after expiration of the maximum term of legal protection of exclusive rights relating to the deposited biological material.
45i. New Deposit of Biological Material

(1) If the deposited biological material ceases to be accessible by the depositary institution, it is permissible to proceed, at the request of the latter, with a new deposit according to the same as those provided by the Budapest Treaty.

(2) The biological material must be deposited within the three months of the request by the depositary institution.

(3) For all new deposits, the depositor must certify in a signed declaration that the biological material which is the subject of the new deposit is the same one that was initially deposited.

(4) The new deposit shall be treated as if it had been made on the date of the initial filing.

45j. Deposit under the Budapest Treaty

In the event of a deposit in accordance with the Budapest Treaty, the declaration of availability, declaration of engagement and duration of storage are governed exclusively by this treaty and by the Regulations Under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure adopted on April 28, 1977.
PART III Examination of the Patent Application

Chapter 1 Examination on Filing and Examination as to Form

46. Filing Date
(1) The filing date is regarded as the date on which the documents filed by the applicant contain:
(a) a statement indicating desire to request the grant of a patent;
(b) information enabling identification of the applicant or contact information, and
(c) a description of the invention or a reference to a previous patent application.

(2) The communication contains the statement referred to in subsection (1)(a), and information referred to in subsection (1)(b), must be written in an official language or in English. The description of the invention referred to in subsection (1)(c), may be written in another language.

(3) The reference to a previous application referred to in subsection (1)(c) must:
(a) specify the reference number and the filing date of the previous application as well as the office where it was filed;
(b) be written in an official language or in English;
(c) indicate that it replaces the description of the invention and any drawings.

(4) When the filed documents contain a reference to a previous patent application, a copy of this application must be produced, along with a translation into an official language in the event that it is written in an official language. Article 50 subsection (4) is reserved. It is not necessary to produce a copy of the previous application and, if necessary, a translation into an official language if the IPI can view them in an electronic database which it accepts for this purpose or if the previous application was filed at the IPI in an official language.

46a. Examination on Filing
(1) If examination of the documents filed concludes that they do not meet the minimum conditions set out in Article 46 subsection (1)(a) and (c), and, if necessary, in conjunction with Article 46
subsection (3) The IPI shall not consider them as an application.

(2) If the documents filed do not meet the other conditions set out in Article 46, the IPI shall notify the applicant of the defects noted, on condition of having contact information. The applicant can correct defects in the three months following the document filing. If the documents were filed in several parts, the time period runs from the moment that the first part was filed.

(3) When the conditions set out in Article 46 are not met following expiration of the time period provided in subsection (2) The IPI shall not consider the documents filed as an application. It shall inform the applicant of this and give its reasons, and shall return the filed documents on condition of having contact information.

46b. Certificate of deposit
(1) When the filing date is fixed, the IPI shall issue a certificate of filing to the applicant.

(2) When the filing date referred to in Article 46 (c) subsection (2) and (5) is subsequently amended, the IPI shall notify the applicant.

46c. Missing parts of the description or missing drawings
(1) The applicant may supply the missing parts of the description or the missing drawings within three months from the document file date. If the documents were filed in several parts, the time period runs from the moment that the first part was filed.

(2) The filing date is regarded as the date on which the missing parts of the description or the missing drawings are filed, in so far as this does not result in a later date under Article 46 subsection (1).

(3) The applicant may, by way of derogation from subsection (2), require that the filing date attributed to the patent application is the date referred to in Article 46 subsection (1): (a) if the missing part of the description or the missing drawings, feature in their entirety in the previous application whose priority is claimed; (b) if the documents filed contain a reference to the previous
application; and
(c) if the reference is written in an official language or in
English and indicates that the contents of the previous application
forms an integral part of the request.

(4) The applicant must present the request referred to in subsection
(3) within in the time period provided in subsection (1) and must
specify where in the previous application the missing parts of
description or the missing drawings may be found. The applicant must
also produce, within the time provided in subsection (1), a copy of
the previous application and a translation into an official language
if it is not written in an official language. It is not necessary to
produce a copy of the previous application and, if necessary, a
translation into an official language if the IPI can view them in an
electronic database which it accepts for this purpose or if the
previous application was filed at the IPI in an official language.

(5) Within one month following issuance of the certificate of
deposit by the IPI (Article 46b), the applicant may request that the
missing parts of description or the missing drawings which it has
filed in accordance with subsection (2) be considered non-existent
with regard to maintaining the filing date.

46d. Technical Documents as Filed
The technical documents deposited on the filing date or which are
referred to in the patent application, are considered as the
technical documents as filed.

46e. Divisional Application
When a divisional application conforms with Article 57 subsection
(1)(a) and (b) of the Law, the IPI shall allow the filing date
claimed to stand as of right, as long as examination as to substance
does not produce another conclusion.

47. Examination as to Form
Parallel to the examination of the conditions for filing date
assignment, the IPI shall verify:
(a) if an address for service in Switzerland must be shown (Article
48);
(b) if a request for the grant of a patent, where at least one claim
and an abstract were filed, and if they satisfy the provisions
(Article 48a to 48c);
(c) if the name of the inventor has been submitted (Article 48d);
(b) if the filing fee has been paid (Article 49);
(e) if the technical documents meet the requirements that do not
concern content (Article 50).

48. Address for Service in Switzerland
(1) When the applicant does not have an address or headquarters in
Switzerland and has not indicated an address for service in
Switzerland (Article 13 of the Law), the IPI shall invite them to do
so, or to indicate the name of an agent having an address for
service in Switzerland (Article 48a, subsection (2) of the Law)
within the three months following document filing.

(2) If the documents were filed in several parts, the time period
provided in subsection (1) shall start from the time the first part
was filed.

48a. Request for the Grant of a Patent
(1) When the form provided for this purpose (Article 23) is not used
for the request for the grant of a patent or when the request does
not satisfy the provisions (Article 24), the IPI shall invite the
applicant to correct defects within the time period provided in
subsection (2) on condition of having contact information.

(2) The applicant may correct defects in the three months following
the document filing. If the documents were filed in several parts,
the time period runs from the moment that the first part was filed.

48b. Claims
(1) When the applicant has not filed claims and the patent
application does not include a reference to a previous application
within the meaning of Article 46 subsection (3), indicating that it
also replaces the claims, the IPI shall invite the applicant to file
one or more claims within the time period set out in subsection (2)
on condition of having contact information.

(2) The applicant may file one or more claims in the three months
following document filing. If the documents were filed in several
parts, the time period runs from the moment that the first part was
filed.
48c. Abstract

(1) Where the applicant has not filed an abstract, the IPI shall invite the applicant to file the abstract within the time period provided in subsection (2) on condition of having contact information.

(2) The applicant can file the abstract in the three months following document filing. If the documents were filed in several parts, the time period runs from the moment that the first part was filed.

(3) If the time period provided in subsection (2) is not met and if the patent application is subject to a rejection for any other reason, the IPI shall draft an abstract on payment of a fee.

(4) The IPI shall decide the content of the abstract ex officio, in order to publish the patent application.

48d. Name of the Inventor

When the applicant does not reference the inventor, the IPI will invite the applicant to produce the name of the inventor within the time limit provided for in Article 35.

49. Filing Fee

(1) Where the applicant has not paid the filing fee, the IPI shall invite the applicant to pay the fee within the time period provided in subsection (2) on condition of having contact information.

(2) The applicant can pay the filing fee in the three months following document filing. If the documents were filed in several parts, the time period runs from the moment that the first part was filed.

50. Defects as to Form in the Technical Documents

(1) Examination of the technical documents by the IPI will verify:
(a) if the required translations have been produced (Article 4);
(b) if the prescribed number of copies have been filed (Article 25 subsection (2));
(c) if the required presentation has been used (Article 25 subsection (1) and (3-7) and Article 28 (1 and 2)).
(2) Where the technical documents do not meet the provisions, the IPI shall invite the applicant to correct the defects noted within the time period provided in subsection (3) on condition of having contact information.

(3) The applicant may correct defects in the three months following the document filing. If the documents were filed in several parts, the time period runs from the moment that the first part was filed.

(4) When the technical documents of an initial Swiss application are written in English, but where they otherwise satisfy the provisions, the IPI may offer a 16 month time period from the filing date or priority date for the submission of a translation into an official language.

51. Amendments to Technical Documents
(1) Once the filing date has been assigned, the only modifications which may be made to the technical documents before the start of the examination as to substance, are those required by the IPI or those to which the applicant is authorised to make under the terms of the present ordinance.

(2) The applicant may amend the claims once on their own initiative within 16 months of the filing date or the priority date. For this purpose, it must file a corrected version of the amended claims within the aforementioned time period.

(3) The IPI shall send the applicant the amendments to the technical documents submitted notwithstanding subsections (1) and (2).

52. Other submissions
(1) The IPI shall invite the applicant to correct those of the defects in the priority declarations or priority documents, submitted in good time, that are susceptible of correction, and if necessary to provide a translation of the priority document (Article 40 subsection 2) and documents concerning a previous application (Article 41). If the applicant does not comply with the invitation, the priority right shall lapse.

(2) Subsection (1) shall apply mutatis mutandis to the declaration
and to documents concerning the immunity derived from an exhibition (Article 44 and 45).

Chapter 2 Report on the State of the Art

Section 1 Request by the Applicant

53. Request and Payment of the Search Fee

(1) Upon payment of the search fee, the applicant may request, within 14 months of the filing date or, if a priority is claimed, according to the date of priority, that the IPI draft a report on the state of the art. If such time limit is not complied with, the right shall lapse.

(2) If the search fee is not paid at the time of submitting the request, the applicant must pay it within the two months following invitation from the IPI, or within 14 months of the filing date or priority date if this period has expired. The request is regarded as submitted only when the search fee is paid.

53a. Claim Fees

(1) If the technical documents contain more than 10 claims, the applicant must pay a claim fee for each additional claim (Article 31a) within the two months following invitation from the IPI, or within 14 months of the filing date or priority date if this period has expired.

(2) In the event of non-payment or of partial payment, the IPI shall not include the supernumerary claims in the search, starting from the last. It shall draft the report on the state of the art based on the remaining claims.

54. Basis for the Report on the State of the Art

(1) The IPI shall draft the report on the state of the art on the basis of the technical documents, amended where necessary under Articles 46 to 50. Article 53a subsection (2) is reserved.

(2) On request, the IPI may agree to draft the report based on technical documents written in English, provided that they satisfy the other requirements set out in Articles 46 to 50. The IPI shall communicate with the applicant in the official language chosen by
the applicant.

(3) When a priority is claimed or corrected after the submission of the request referred to in Article 53, it shall not be taken into account for the search of the state of the art.

(4) The IPI shall produce the report on the state of the art provided that the patent application has not been withdrawn or rejected when the request referred to in Article 53 is submitted. If the patent application is withdrawn or rejected later, and if the IPI has not yet begun the searches, it shall not draft a report and shall refund the search fee.

54a. Sequence Listings
If the invention subject to search relates to nucleotide or amino acid sequence listings, the IPI may require the applicant to provide an electronic sequence listing, produced in accordance with the standard set out in Annex C of the Administrative Instructions under the Patent Cooperation Treaty (PCT).

55. Content of the Report on the State of the Art
(1) The report on the state of the art shall list the documents that the IPI has identified during the search, and which may be taken into consideration in deciding whether the invention to which the patent application relates is new and if it involves an inventive step from the state of the art.

(2) The documents are numbered and referred to the claims to which they relate. If necessary, the IPI shall highlight the decisive parts of each document.

(3) The report on the state of the art makes the distinction between:
(a) documents which were published before the claimed date of priority;
(b) documents which were published between the priority date and the filing date;
(c) documents which were published before the claimed priority date;

(4) The report shall be written in the language used for the procedure.
(5) It shall show the classification code of the invention subject to the patent application in accordance with the Strasbourg Agreement Concerning the International Patent Classification dated March 24, 1971.

56. Incomplete Searches on the State of the Art
If the IPI considers that it is impossible to carry out a meaningful search of the state of the art on the basis of all or some of the subject-matter claimed, the IPI shall record this in a reasoned statement or will issue a partial search report of the state of the art. The statement or the partial report shall be published instead of the report on the state of the art.

57. Lack of Unity
(1) Where the IPI considers the patent application to lack unity of invention, it shall draw up a report on the state of the art for the parts of the patent application which relate to the invention or the group of inventions within the meaning of Article 52 subsection (2) of the Law first mentioned in the claims.

(2) The IPI shall inform the applicant that they must pay, within the time limit specified, a search fee for each additional invention if they want the search report to relate to one or more additional inventions. The time limit granted by the IPI is at least two weeks and up to a maximum of six weeks.

(3) The report is drawn up for the parts of the application which refer to the inventions for which the applicant has paid the search fees.

58. Transmittal of the Report on the State of the Art
When the report on the state of the art has been drawn up, the IPI shall send it to the applicant together with copies of all the documents mentioned in it.

Section 2 Request by a Third Party

59. Request and Payment of the Search Fee
(1) If no report on the state of the art within the meaning of Articles 53 to 58, and no international-type search within the
meaning of Articles 126 and 127 have been requested, any person entitled to request consultation of the file under the terms of Article 90 may request the IPI to draw up a report on the state of the art on payment of a fee.

(2) The request is regarded as submitted when the search fee is paid.

59a. Basis for the Report on the State of the Art
(1) The report on the state of the art is drafted:
(a) before publication of the application specification, based on technical documents, modified where necessary under Articles 46 to 50, or on technical documents written in English in accordance with Article 54 subsection (2);
(b) following publication of the application specification and before grant of the patent, based on published technical documents, and where necessary any claims amended under Article 51 subsection (2) shall be decisive;
(c) after the grant of the patent, based on the published patent, possibly limited following opposition proceedings, partial renunciation proceedings or civil proceedings.

(2) If a priority is claimed or corrected after submission of the request referred to in Article 59, it is not taken into account for state of the art searches.

59b. Content of the Report on the State of the Art
(1) The content of the report on the state of the art is governed by Article 55.

(2) Articles 56 and 57 shall apply mutatis mutandis.

59c. Transmittal of the Report on the State of the Art
(1) When the report on the state of the art has been drawn up, the IPI shall send it to the applicant together with copies of all the documents mentioned in it.

(2) The IPI shall place a copy of the report on file and shall inform the applicant or the patent holder.

(3) The report is not published.
Chapter 3 Publication of the Patent Application

60. Purpose and Form
(1) The patent application is published as a booklet. This contains:
   (a) information from the application (Article 24) which will be included in the patent register (Article 60 subsection (1bis) of the Law), the description, claims and drawings, and any amendments under Articles 46 to 50, and 52;
   (b) the abstract;
   (c) the classification;
   (d) where necessary, the state of the art report (Articles 53 to 58) or the international-type search (Articles 126 and 127).

(2) If the applicant has filed amended claims under Article 51 subsection (2), these will be published in addition to the claims referenced in subsection (1)(a).

(3) If the a report on the state of the art or an international-type search have been requested, and if the report or search is not available at the end of the technical preparations undertaken for publication, the report or search shall be published separately.

(4) Publication is exclusively in electronic form.

60a. Language
(1) The application specification shall be published in an official language.

(2) When the international-type search (Articles 126 and 127) has been written in English, it shall be published in this language.

60b. Early Publication
The applicant can request early publication if the filing date has been assigned and if the patent application satisfies all the requirements provided by the present ordinance.

60c. No Publication
The IPI will not publish the application specification:
   (a) when the patent application has been withdrawn or definitively rejected, 17 months after the filing date or priority date at the
(b) when the applicant has requested examination as to substance in accordance with the rapid procedure, and where the patent specification is published before the application specification (Article 58a of the Law);
(c) where it is for an international request or a patent application resulting from an international request, or
(d) when the patent application results from the transformation of a European patent application or a European patent, and where the European patent application or European patent is already published.

61. (repealed)

Chapter 4 Examination as to Substance

Section 1 General Provisions

61a. Examination fee and claim fees

(1) Before the beginning of the examination as to substance, the applicant must pay the examination fee within the time limit following the invitation to do so by the IPI.

(2) If the technical documents contain more 10 claims, and if the applicant has failed to pay the claim fees for the supernumerary claims (Article 31a) or only partially paid (Article 53a), they must pay the claim fees due within 2 months following invitation to do so by the IPI.

(3) In the event of failure to pay or of partial payment, the supernumerary claims shall be deleted, starting from the last.

62. Postponement of Examination as to Substance

(1) While the examination as to substance is not finished, the applicant can request postponement if they can show:
(a) that they have filed a European patent application indicating Switzerland in addition to their Swiss patent application for the same invention; and
(b) that the applications have the same filing date or priority date.

(2) The examination as to substance shall be postponed at the latest
until the time when:
(a) the European patent application is either rejected or definitively withdrawn, or regarded as withdrawn for Switzerland;
(b) the time period for oppositions against the European patent expires without having been used;
or
(c) a decision concerning the opposition against the European patent becomes enforceable.

(3) The applicant may request postponement while the examination as to substance is not finished if they can show:
(a) that they have filed an international patent application in addition to the Swiss patent application for the same invention; and
(b) that the applications have the same filing date or priority date.

(4) The examination as to substance shall be postponed at the latest until the time when:
(a) the international application is withdrawn or rejected definitively for Switzerland;
(b) the time period for oppositions against the patent granted by the international application expires without having been used;
(c) a decision concerning the opposition against the patent granted by the international application becomes enforceable; or
(d) in the case of a European patent application resulting from an international application, the time period provided in Article 159 of the regulations under the European Patent Convention dated December 7, 2006, has expired.

(5) Requests referred to in subsections (1) to (4) do not have a suspensory effect on the time limits that have already been set.

62a. Postponement of Examination as to Substance in the Event of a Domestic Priority Claim

(1) When a patent application is used as a basis for a domestic priority claim, and the examination as to substance has not been completed, the applicant can request that the examination as to substance be postponed until the grant of the patent resulting from the subsequent application.

(2) If the subsequent patent application is rejected or withdrawn
definitely, the examination as to substance shall begin again.

(3) Requests referred to in subsection (1) do not have a suspensory effect on the time limits that have already been set.

63. Rapid Procedure
(1) The applicant may request that the examination as to substance be carried out according to a rapid procedure. Until the period of 18 months from the filing date or priority date has expired, this request can only be submitted if the technical documents satisfy the requirements set out in Articles 46 to 52.

(2) The request is regarded as submitted when the fee invoiced for this purpose by the IPI has been paid.

64. Amended Technical Documents
(1) At the beginning of the examination as to substance, the applicant can amend the technical documents on their own initiative.

(2) After receiving the first notification, the applicant may amend the technical documents again on their own initiative, provided that the amendments are sent at the same time as the response to the notification. Any other amendments are only allowed with the approval of the IPI.

(3) Amendments to technical documents should not extend the object of the modified patent application beyond the contents of the technical documents as filed (Article 46d).

(4) When a claim is modified or reformulated as to substance, the applicant must state, at the request of the IPI, the part of the technical documents as filed (Article 46d) in which the redefined object was described for the first time.

(5) If it arises from the examination as to substance that the object of the amended patent application has been extended beyond the contents of the technical documents as filed (Article 46d), the IPI shall allow applicant a period of time to respond. The latter may:
(a) renounce the amendment in so far as the description of the invention is not affected; or
(b) provide proof that the invention is already described in the technical documents as filed.

(6) If the applicant does not renounce the amendment or if they fail to dispose of the IPI's objections, the IPI shall reject the patent application.

(7) If the applicant informs the IPI that they renounce the amendment before the rejection decision becomes enforceable, the examination as to substance shall restart on the basis of this renunciation.

65. Divisional application filing date
(1) At the request of the IPI, the applicant shall state in which part of the technical documents as filed (Article 46d) the subject matter defined in the divisional application was described for the first time.

(2) If it proves that the filing date assigned to a divisional application at the time of examination on filing (Article 46e) is wrongly claimed, Article 64 subsection (4) to (7) shall apply mutatis mutandis.

66. Classification
(1) Every patent application shall be classified according to the International Patent Classification established by the Strasbourg Agreement of March 24, 1971. The applicant shall provide the necessary information to this end.

(2) The IPI may amend the classification until the time of recording in the Patent Register.

Section 2 Purpose and Completion of Examination

67. Procedure
(1) The IPI shall first ascertain whether the patent application should be the subject of a notification under Article 59 (1) of the Law. If such is the case, it shall reject the patent application when the applicant is not capable of disposing of the objections raised by amending the technical documents or in another way.
If the patent application does not comply with the provisions of Articles 49a, 50, 50a, 51, 52, 55 and 57 of the Law or with those of this Ordinance, the IPI shall allow the applicant a period of time for the correction of any defects. If the defects are corrected only in part, the IPI may, when it sees fit, make other notifications.

68. (Repealed)

69. End of Examination
(1) If the conditions to which publication of the patent application is subject are met, the IPI shall communicate the scheduled date for the completion of the examination procedure to the applicant at least one month in advance. At the same time, there shall also be communicated any amendments or corrections to the abstract and title within the meaning of Article 22.

(2) If the technical documents as filed, or which have amendments communicated in accordance with subsection (1) comply with the provisions of the Law and this Ordinance, the applicant shall be deemed to have approved the version in which the patent is to be granted.

Chapter 5 Preparation of Grant of the Patent

70. (Repealed)

71. (Repealed)

72. Delaying Period
Requests for the provisional or final recording of amendments in the patent register, as well as the withdrawal of the patent application, that reach the IPI after the scheduled date for the completion of the examination procedure shall be deemed not to have been filed until after the grant of the patent.

Chapter 6 Opposition Procedure

73. Form and Content
(1) Opposition shall be filed in duplicate within 9 months following publication of the recording in the patent register, and shall contain:
(a) the surname and given name, or corporate name and the address of the opposing party, an address for service in Switzerland, if necessary;
(b) the number and title of the patent under consideration;
(c) the declaration stating the extent to which the grant of the patent is opposed;
(d) the grounds for opposition (Articles 1a, 1b and 2 of the law);
(e) a statement of the reasons, giving all the facts and proofs invoked.

(2) The opposition fee must be paid within the time limit for opposition provided in Article 59c of the Law.

(3) Documents invoked as proof of opposition shall be included in the file.

74. Examination of the Opposition
(1) If the opposition does not satisfy the requirements set out in Article 73 subsection (1)(a) to (e), and (2), and if the defects are not corrected before the expiry of the time limit for opposition (Article 59c of the Law), the IPI shall not respond.

(2) If the opposition is in conformity with the conditions set out in subsection (1), but does not satisfy other provisions of the Law or this Ordinance, the IPI shall allow reasonable additional time to opponent so that they may rectify the situation. The IPI shall warn at the same time that it will declare the opposition inadmissible if this time remains unused.

(3) If, even after having been invited to do so, the opposing party does not provide written matter it has invoked as proof, the IPI shall not be bound to take this proof into consideration.

75. Language
(1) The opposition procedure shall take place in the language in which the opposed patent is written.

(2) The opposition or other documents submitted by the parties may be produced in another official language (Article 4 (1)).

(3) All amendments to technical documents (Article 81) must be made
in the language used for the procedure.

(4) When a document invoked as proof is written neither in an official language nor in English, the IPI may demand a translation into the language adopted for the procedure. If such a translation is not produced, the IPI shall not be bound to take this proof into consideration.

76. Parties
(1) The parties are the patent holder and the opposing party.

(2) In the event of a patent transfer, Article 33 (3) of the Law shall apply mutatis mutandis.

77. Address for Service of the Parties
(1) The opposing party must supply an address for service in Switzerland (Article 13 of the Law), and should communicate this address within the time limit for opposition or during the additional time granted by the IPI. The IPI shall warn the opposing party at the same time that it will declare the opposition inadmissible if this additional time remains unused.

(2) The patent holder must supply an address for service in Switzerland and should communicate this address within the time limit granted by the IPI. If it does not meet this obligation, it shall be excluded from the procedure.

(3) (Repealed)

78 Multiple Oppositions
When several oppositions are formed against the same patent, the IPI shall join them together into a single procedure.

79. Number of Copies and Annex Documents
Subject to Article 73 subsection (1), a copy of the documents and Annexes are given to the IPI and a copy to each opposing party; if there is a failure to do this, the IPI may grant additional time to the appellant party or make usable copies at the expense of the latter.
80. Rebuttal of the Opposition
The IPI shall notify the patent holder of the opposition, who shall be invited to make a rebuttal and, where applicable, to produce the amended documents. The IPI shall allow them a reasonable time for this purpose.

81. Amendment of the Patent
(1) Amendment of the claims, description and drawings is only permitted if a grounds for opposition within the meaning of Article 59(c) of the Law makes it necessary.

(2) The patent cannot be amended to the point:
(a) that its object is extended beyond the content of the technical documents as filed (Article 46d), or
(b) that its material field of application is extended.

82. Exchange of Statements
(1) The IPI shall communicate the reply of the patent holder and, where necessary, amendments to the technical documents to the opposing parties. When multiple oppositions have been made, it shall also bring the other oppositions to their notice.

(2) The IPI shall invite the opposing parties to state their views if the patent holder has amended the technical documents, or if it considers this necessary for other reasons. They shall allow a reasonable time period.

(3) The IPI may invite the parties to a further exchange of statements.

83. Opinion of the Ethics Committee
(1) The IPI may ask for, following a reasoned request from one of the parties or of office, an decision from the Federal Ethics Committee on Non-Human Biotechnology (ECNH).

(2) It shall send the Ethics Committee decision to all parties and offer them the opportunity to respond in writing.

84. Oral Hearing
(1) The IPI may, following a reasoned request from one of the parties or of office, invite the parties to take part in oral
hearing if this is considered suitable for clarification of the facts.

(2) The hearing is not public. On a purely exceptional basis, the IPI can, following a reasoned request from one of the parties or of office, consider a public hearing if major public interests justify this. Summary minutes shall be taken of the hearing.

(3) The deliberations shall take place as closed proceedings.

85. Final Decision
(1) When the documents are in order to be considered, the IPI shall decide:
(a) that the patent application is entirely or partly rejected and that, to that extent, the opposition is allowed; or
(b) that it is upheld without amendments and that the opposition is rejected, or
(c) that it can be upheld in an amended form on the basis of the technical documents presented or amended in the course of the opposition procedure, and that the opposition is rejected with respect to any other matter.

(2) If the patent is upheld in an amended form, the IPI shall invite, once the decision has come into force, and where necessary, the patent holder to amend the technical documents. If the applicant does not comply with this request, or if the amended technical documents do not conform with the decision of the IPI, the patent shall be rejected.

(3) If the technical documents amended during the opposition procedure comply with the IPI decision from the outset, the applicant is considered to approve the version of the patent which has been upheld.

86. Opposition fees and Costs
(1) If the opposition is allowed, the opposition fee is generally refunded to the opposing party; if it is partially allowed, the fee is proportionally refunded. The IPI does not refund the opposition fee when particular circumstances justify it, in particular when the opposing party has deliberately delayed the proceedings.
(2) No expenses shall be awarded.

87. Registration and Publication
The IPI shall record patents in the register and shall publish revoked patents, upheld patents or patents upheld with a modified scope. The IPI shall send a new patent document to the patent holder.

88. Applicable Law
The Federal Law on Administrative Procedure dated December 20, 1968 shall apply to the opposition proceedings in so far as this Ordinance does not provide otherwise.
PART IV Patent Files and Register, and IPI Publications

Chapter 1 File

89. Contents
(1) The IPI shall keep a file on every patent application and every patent containing information on the course taken by the examination procedure and on the amendments affecting the existence of the patent and the right to the patent.

(2) Any person who includes a probative document among the documents and states that the said document discloses manufacturing or business secrets may request that it be filed separately. The existence of such documents shall be mentioned in the file.

(3) (Repealed)

90. Inspection of Documents
(1) Before publication of the application specification, or before the grant of a patent if this occurs first, the following persons shall be authorised to inspect the file:
(a) the applicant and their agent;
(b) persons who are in a position to prove that the applicant has alleged violation by them of the rights deriving from his patent application or that he has warned them against such violation;
(c) third parties who are in a position to prove that the applicant or his agent has consented thereto.

(2) These persons shall also be authorised to consult rejected or withdrawn patent applications.

(3) After the stage referred to in subsection (1), the file may be inspected by any person.

(4) Any person who, by virtue of subsections (1) or (2), intends to inspect the file shall inform the IPI in advance of the date on which they intend to do so.

(5) If the inspection of probative documents filed separately (Article 89 (2) is requested, the IPI shall make a decision after having heard the patent applicant or patent owner.
(6) Where the public interest so requires, the Federal Department of Justice and Police may authorise the IPI to allow divisions of the Federal Administration to inspect the file.

(7) On request, the documents to be inspected shall be issued in the form of copies.

(8) The general provisions on mutual judicial assistance shall be reserved.

91. (Repealed)

92. Keeping of Documents
(1) The IPI shall keep the original or a copy of the documents relating to deleted patents for 5 years from deletion.

(2) The IPI shall keep the original or a copy of the documents relating to withdrawn or rejected patent applications for 5 years from the withdrawal or rejection, but for at least 10 years from the date of filing.

Chapter 2 Patent Register

93. Keeping of the Register
(1) The IPI shall keep a register of patents granted.

(2) Published patent applications shall be provisionally registered therein. Once the patent has been granted, the provisional entries shall be regarded as final.

(3) (Repealed)

94. Contents of the Register
(1) Patents shall be finally entered in the Register with the following particulars:
(a) patent number;
(b) classification;
(c) title of the invention;
(d) filing date;
(e) patent application reference number;
(f) (Repealed)
(g) patent grant date;
(h) priorities and immunities derived from exhibitions;
(i) surname and given name or company name, the address for service or headquarters and the address of the patent holder;
(k) name and address of the agent, if one has been appointed;
(l) name and address of the inventor, except where the inventor has elected not to be mentioned;
(m) rights granted, likewise restrictions of the right of disposal, imposed by courts or authorities responsible for enforcement;
(n) changes affecting the existence of the patent or the right to a patent;
(o) changes to the address or headquarters of the patent holder;
(p) changes of agent, or of the address of the agent.
(q) opposition proceedings in progress and the operative part of the final decision.

(2) Published patent applications shall be provisionally entered with the corresponding indications.

(3) The IPI may also enter, provisionally or finally, such other indications as it considers useful.

95. Consultation and Extracts from the Register
(1) The Patent Register may be consulted freely.

(2) On request, the IPI shall make extracts from the Patent Register.

Chapter 3 Modifications

SECTION 1 MODIFICATIONS AFFECTING THE EXISTENCE OF THE PATENT

96 Partial Renunciation
a. Form
(1) The declaration of partial renunciation of a patent (Article 24 of the Law) shall be filed in writing and in two copies.

(2) It shall be unconditional.

(3) It is subject to a fee.
b. Contents

(1) The declaration of partial renunciation shall not give rise to any doubt as to the legal scope of the claims; Articles 1, 1a, 2, 51, 52 and 55 of the Law shall also govern the rearrangement of the claim.

(2) The description, drawings and abstract may not be modified. Partial renunciation nevertheless includes a declaration of the following kind:

Such parts of the description and drawings as are incompatible with the rearranged claims are to be regarded as deleted.

(3) If the declaration of partial renunciation is not in conformity with the requirements, the IPI shall allow the owner of the patent a period in which to remedy the defect. If the defect is remedied only in part, the IPI may, if it sees fit, make other notifications.

(4) (Repealed)

c. Registration and Publication

(1) If the declaration of partial renunciation is in conformity with requirements, it shall be registered.

(2) The IPI shall publish it and attach it to the patent specification; a new patent document shall be issued to the owner of the patent.

(3) At the same time, the IPI shall allow the owner of the patent a period of three months in which to apply for the constitution of new patents (Article 25 of the Law).

d. Limitation of Partial Renunciation

A request for partial renunciation is inadmissible while an opposition to the patent can be made and while an enforceable decision has not been returned regarding any opposition.

d. Limitation by the Court

Article 98 shall apply mutatis mutandis when the patent has been
limited by the court (Article 27 or 30 of the Law).

100 Constitution of New Patents
a. Request
The provisions governing patent applications shall apply to the request for the constitution of a new patent (Article 25, 27(3) or 30(2) of the Law); Articles 101 and 102 are reserved.

101
b. Claims
(1) For each new patent to be constituted under Article 100, at least one new claim shall be made within the limits of the claims deleted from the original patent, account being taken of Article 24 of the Law.

(2) (Repealed)

102
c. Description
(1) With regard to the description and drawings, reference may be made to the specification of the original patent; a statement of the following kind shall be added:
Such parts of the descriptions and drawings appearing in patent specification No. ... as are incompatible with the claims of this patent are to be regarded as deleted.

(2) If the reference provided for in subsection (1) gives rise to doubt as to the legal scope of the patent, the parts of the specification of the original patent that are necessary for the understanding of the claim of the new patent shall be reproduced in an appropriate form.

SECTION 2 MODIFICATIONS AFFECTING THE RIGHT TO THE GRANT OF A PATENT AND THE RIGHT TO THE PATENT; CHANGES OF AGENT

103. Partial Allowance of an Action for Assignment
(1) If the court has ordered the assignment of a patent application with the elimination of certain claims (Article 30 of the Law), the applicant against whom this ruling is made may, with the eliminated claims, make one or more patent applications. Their filing date shall be that of the assigned application, and in other respects they shall
be treated as divisional applications (Article 57 of the Law).

(2) If the court has ordered the assignment of a patent with the elimination of certain claims (Article 30 of the Law), the owner of the patent to which the said ruling applies may, with the eliminated claims request the constitution of one or more new patents (Articles 100 to 102).

(3) If it has the final judgment on the assignment in its possession, the IPI shall allow the patent applicant or owner against whom the ruling has been made a time limit for filing new patent applications or a request for the constitution of new patents.

104. Mention in the File

(1) Before the grant of a patent, the following shall be mentioned in the file:
(a) changes of applicant;
(b) changes of corporate name or business style;
(c) other changes such as changes of domicile of notification in Switzerland or the agent, the grant of right and restrictions on the right of disposal ordered by the courts or by the authorities responsible for measures of distraint.

(2) Article 105(2) to (4) shall apply mutatis mutandis.

(3) The party acquiring a patent application shall take over the application in the state in which it was at the time the probative document reached the IPI.

105. Provisional or Final Recording in the Patent Register

(1) The following shall be provisionally or finally entered in the Patent Register:
(a) (Repealed)
(b) changes affecting the right to the patent;
(c) changes of corporate name or business style;
(d) other modifications, such as changes of agent, the grant of rights and restrictions to the right of disposal ordered by the courts or by authorities responsible for measures of distraint.

(2) All amendments shall be certified by a written declaration by the previous applicant or owner or by any other probative document;
Articles 106 and 107 shall remain unaffected. Probative documents shall be incorporated in the file.

(2bis) (Repealed)

(3) Insofar as an exclusive license is provisionally or finally entered in the Register, no other license that is incompatible with it shall be either provisionally or finally entered in respect of the same patent.

(4) A sublicense shall be provisionally or finally entered if it is certified by a written declaration of the licensee who has been provisionally or finally entered, or by another probative document that is adequate. In other respects, the right of the licensee to grant sublicenses shall be required to be established.

(5) -(6) (Repealed)

106. Cancellation of Third-Party Rights
At the request of the patent applicant or holder, the IPI shall cancel rights in favour of a third party mentioned in the file or entered provisionally or finally in the patent register, if, an express declaration of renunciation on the part of the third party or another document deemed equivalent is submitted.

107. Changes of Agent
(1) Changes of agent shall be mentioned in the file or provisionally or finally entered in the Patent Register on submission of the power of attorney in favor of the new agent.

(2) The appointment of a new agent shall for the IPI constitute revocation of the power of attorney in favor of the previous one.

(3) (Repealed)

Chapter 4 IPI Publications

108. Publication Organ
(1) The IPI shall determine the organ of publication.

(2) On request, and on payment of a fee, the IPI shall produce paper
copies of data published exclusively in electronic form.

The patent application shall be published on the date of grant of the patent.
PART V Restrictions to Patent Rights

Chapter 1 Agricultural Exemption

110. List of plant species
The plant species which are afforded agricultural exemption are those listed in Annex 1 of the Ordinance on Variety Protection dated June 25, 2008.

Chapter 2 Compulsory licence for exportation of pharmaceutical products

111. Content of Legal Proceedings
(1) When the recipient country is member of the World Trade Organisation (WTO), in addition to the grant of a compulsory licence for the export of pharmaceutical products, that appellant must include the notification from the Council for Trade Related Aspects of Intellectual Property Rights (Council for TRIPS) in which the beneficiary country:
(a) defines the quantity of the pharmaceutical product necessary to meet its needs;
(b) declares that it does not have any production capacity or has insufficient capacity, unless it is one of the least-developed countries according to the United Nations (UN) list; and
(c) declares that it has a compulsory licence for the importation of the pharmaceutical product in question, in so far as this product is patented on its territory.

(2) If the recipient country is not member of WTO, the appellant party must present a declaration to the IPI which has the status of a notification within the meaning of subsection (1).

(3) Notification referred to in subsection (1) and the declaration referred to in subsection (2) provide full proof of the information which is contained, as long as any inaccuracies of content is not proven.

(4) The legal proceedings shall also include:
(a) evidence that efforts made in order to obtain a contractual licence (Article 40e of the Law) was not successful;
(b) production quantities that the appellant party has the intention
of manufacturing and the names of licences which have already been
granted to the best of their knowledge;
(c) measures that the appellant party has envisaged to identify
pharmaceutical products manufactured under licence (Article 111a);
(d) the Internet address where information referred to in Article
111b is published.

111a. Measures used to Identify Products
(1) The licensee must clearly identify the pharmaceutical products
manufactured under licence by means of suitable measures.

(2) Suitable measures are those such as information labels on
packaging or on product materials, such as ampoules, blister packs
and containers, and on all documents relating to the products which
specify that the product is the subject of a compulsory licence for
the export of pharmaceutical products and that it is exclusively
intended for export to the country indicated.

(3) Measures must be proportional and must not have a significant
impact on the price of products.

111b. Licence Holder Disclosure Obligation
The licensee is held, as of granting of the licence, to publish
following information on their website or on the WTO website:
(a) the name of the pharmaceutical products for which the licence
was granted;
(b) quantity of production;
(c) recipient countries;
(d) measures that allow products manufactured under licence to be
distinguished from patented products (Article 40d, (4) of the Law).

111c. IPI Obligation to Inform and Notify
(1) If the recipient country is member of WTO, the IPI shall inform
the Council for TRIPS of the grant of a licence within the meaning
of Article 40d of the Law. The communication shall include the
following particulars:
(a) the name and address of the licensee;
(b) the name of the pharmaceutical products for which the licence
was granted;
(c) quantities of production and the delivered quantities;
(d) recipient countries;
(e) duration of the licence;
(f) Internet address (Article 111b).

(2) If the recipient country is not member of WTO, the IPI shall publish the data referred to in subsection (1) on its website.

(3) The courts shall communicate all necessary information to the IPI so that it can discharge its obligation to inform and to notify.
PART VI Intervention of the Customs Administration

112. Scope of the application
The Customs Administration is authorised to intervene in the event of the entry to or exit from the customs territory of goods which infringe a valid patent in Switzerland.

112a. Intervention Request
(1) The patent holder or the licensee with capacity to act (appellant) must present the request for intervention to the Federal Customs authorities.

(1 bis) The Federal Customs authorities shall return its decision on the request within 40 days following receipt of all supporting documentation.

(2) The request is valid for 2 years, unless a shorter period of validity is specified. It may be renewed.

112b. Seizure of Goods
(1) When Customs seizes goods, it shall keep them on deposit against payment of a charge or it stores them with a third party at the expense of the appellant.

(2) It shall send the appellant the name and address of the declarant, the holder or owner, a precise description and the quantity of the retained goods as well as the name of the shipper in Switzerland or abroad of the aforesaid goods.

(3) If it seems that before expiry of the time limit provided in Article 86c, subsection (2) or (3), of the Law, that the appellant will not be able to obtain provisional measures, the customs office shall return the goods without delay.

112c. Samples
(1) The appellant may submit a request to be given samples of the goods for examination and inspection of the seized goods. Instead of samples, the Customs Administration may also supply photographs of the aforementioned goods if they will enable them to carry out this examination.
(2) The appellant may submit this request to the Federal Customs authorities at the same time as the request for intervention or, during the seizure of the goods, directly at the customs office which seized the goods.

112d. Protection of Manufacturing and Trade Secrets

(1) The Customs Administration shall inform the declarant, the holder or the owner of the goods of the possibility of refusing to allow samples to be taken on presentation of a reasoned request. It shall allow a reasonable time for the presentation of this request.

(2) If the Customs Administration authorises the appellant to inspect the seized goods, when fixing the inspection time it shall take into account, in an appropriate manner, the interests of the appellant on the one hand, and of those of the declarant, the holder or the owner, on the other hand.

112e. Conservation of Evidence in the Event of Destruction of the Goods

(1) The Customs Administration shall retain samples taken for one year as from the communication sent to the declarant, the holder or the owner in accordance with Article 86c, subsection (1) of the Law. After expiry of this time limit, it shall invite the declarant, the holder or the owner to regain possession of the samples or to bear the costs for the continuation of their storage. If the declarant, the holder or the owner do not respond to this invitation or if they do not make their decision known within 30 days, the Customs Administration shall destroy the samples.

(2) Instead of taking samples, the Customs Administration may take photographs of the destroyed goods in so far as this measure makes it possible to guarantee the conservation of evidence.

112f. Fees

The fees charged for the intervention of the Customs Administration are fixed in the Ordinance on the Fees of the Federal Customs Administration dated April 4, 2007.

113. (Repealed)
PART VII European Patent Applications and European Patents

114. Scope of the Ordinance
(1) This Part shall apply to European patent applications and European patents that produce their effects in Switzerland.

(2) The other provisions of this Ordinance shall also apply, except where Article 109 of the Law and this Part provide otherwise.

115. Filing with the IPI
(1) Persons who have their domicile or headquarters in Switzerland shall be entitled, as applicants or agents, to file European patent applications with the IPI, with the exception of divisional applications.

(2) The IPI shall indicate on the application documents the date on which they received them.

(3) Fees collected under the European Patent Convention of 5 October 1973 shall be paid directly to the European Patent Office.

116. (Repealed)

117. Register and File
(1) The following shall be entered in the Swiss Register of European Patents (Article 117 of the Law):
(a) the information given in the European Patent Register at the time of grant;
(b) the information contained in the European Patent Register on the subject of opposition, limitation or revocation;
(c) in addition, the indications provided for Swiss patents.

(2) The IPI shall register the information in the language used in the procedure before the European Patent Office; where that language is English, registration shall take place in German, the patent holder may request that the registration be made in French at any time.

(3) The language adopted according to subsection (2) becomes the language in which the procedure takes place (Article 4).
The IPI has a file for each European patent.

117a. Patent Marking
For European patents having effect in Switzerland, the patent marking (Article 11 of the Law) shall comprise the reference “EP/CH” followed by the number of the patent.

118. Transformation
(1) When a European patent application or a European patent is converted into a Swiss patent application, the IPI shall allow the applicant a time limit of two months to carry out the following operations:
   (a) pay the filing fee (Article 17a (1a));
   (b) produce the translation (Article 123 of the Law);
   (c) designate an address for service in Switzerland (Article 13 of the Law).

(2) Annual fees already due shall be paid within six months following the invitation to do so by the IPI; if payment is made during the last three months, a surcharge shall be collected.

118a. Annual Fees
A European patent shall be subject to the payment each year in advance of annual fees levied by the IPI; the first payment shall be due for the year which follows that during which the grant of the European patent has been notified in the European Patent Bulletin, but at the earliest at the start of the fourth year following filing of the application.
PART VIII International Patent Applications

Chapter 1 Scope of the Ordinance

119. Scope of the Ordinance
(1) This Part shall apply to international applications in respect of which the IPI acts as receiving IPI or designated IPI or elected.

(2) The other provisions of this Ordinance shall also be applicable, except where Article 131 of the Law or this Part provides otherwise.

Chapter 2 The IPI as Receiving Office

120. Filing of the International Application
(1) The international application filed with the IPI shall be made out in French, German or English.

(2) The IPI shall communicate with the applicant in French or German.

121. Transmittal Fee and Search Fee
(1) The transmittal fee (Article 133 (2) of the Law) shall be paid to the IPI during the month following receipt of the international application.

(2) Subsection (1) shall apply mutatis mutandis to the search fee, the amount of which shall be fixed on the basis of the agreement concluded with the International Searching Authority competent for Switzerland. The IPI shall publish the amount of the search fee fixed by the International authority.

122. Other Fees
(1) The payment of other fees is in accordance with the Implementing Regulations of the Patent Cooperation Treaty dated June 19, 1970 (Cooperation Treaty Regulations).

(2) The amounts of these fees appear in the Schedule of Fees of the Cooperation Treaty Regulations.

122a. (Repealed)
122b. Restitution of Right of Priority

(1) Against payment of a fee, the IPI shall restore the priority time limit in accordance with Article 26bis.3 of the Cooperation Treaty Regulations, if the applicant has not been able to comply with this time limit although it showed all due care required by the circumstances.

(2) The decision of the IPI is final.

Chapter 3 The IPI as designated Office

123. Provisional protection

(1) Where the international application has not been published in an official Swiss language, the aggrieved party may only claim damages suffered since the day when the applicant:
(a) provided the defendant with a translation of the claims in an official Swiss language; or
(b) has made it accessible to the public through the IPI.

(2) All persons who submit a translation of the claims for a published international application to the IPI must indicate the application number.

(3) The IPI shall record the date when the translation is produced. They shall only check the completeness.

(4) The IPI shall make the translation available immediately and shall record the day when it was available for viewing.

(5) If the translation is corrected, subsections (1) to (4) shall apply mutatis mutandis.

124. Conditions for the start of the national phase

(1) Within 30 months of the filing or priority date, the applicant must complete the following steps with the IPI:
(a) name the inventor in writing;
(b) where necessary, indicate the source (Article 45(a));
(c) pay the filing fee;
(d) produce a translation into an official Swiss language if the international application has been written in another language.
(2) If the applicant has not fulfilled the conditions set out in subsection (1), the international application is regarded as withdrawn for Switzerland.

(3) Where the applicant does not have an address or headquarters in Switzerland, they should supply address for service in Switzerland (Article 13 of the Law) within the time period provided in subsection (1). If an address for service has not been provided within this time limit, the IPI shall allow a period of 2 months for it to be supplied. The application shall be rejected if this time limit is not complied with.

(4) If the priority document is not presented to the recipient IPI or the International Bureau within 16 months following the priority date, the priority right shall lapse.

(5) Article 52 subsection (1) shall apply mutatis mutandis when the priority document is not written in an official Swiss language or in English.

125. Restitution of Priority Right
Against payment of a fee, the IPI shall restore the priority time limit in accordance with Article 49ter.2 of the Cooperation Treaty Regulations, if the applicant has not been able to comply with this time limit although it showed all due care required by the circumstances.

Chapter 4 The IPI as Elected Office

125a. Translation of Annexes to the International Preliminary Examination Report
(1) In those cases where a translation is to be submitted under Article 138(1)(d) of the Law, the annexes to the international preliminary examination report shall be translated into the same official Swiss language as that of the international application within a period of 30 months following the filing date or the priority date.

(2) If the time limit laid down in subsection (1) is not complied with, the IPI shall allow the applicant an additional period of two months. If that additional time limit is not complied with, the IPI shall declare the application to be inadmissible.
125b. **Content and Consultation of Files**

(1) The file of an international application shall contain, in addition to the contents set out in Article 89, the international preliminary examination report.

(2) Once the international application has entered the national phase, the file may be freely consulted.

125c. **Restitution of Priority Right**

Against payment of a fee, the IPI shall restore the priority time limit in accordance with Article 49ter.2 of the Cooperation Treaty Regulations, if the applicant has not been able to comply with this time limit although it showed all due care required by the circumstances.
PART IX International Searches

126. Condition
(1) An international search within the meaning of Article 15 subsection (5) of the PCT may be requested in respect of an initial Swiss patent application.

(2) The request shall be filed with the IPI within six months following the filing date. The international search fee shall be paid at the same time. The search fee amount is fixed by the International Searching Authority competent for Switzerland, unless the IPI-RT provides otherwise.

(3) If the patent application is not written in a working language of the International Searching Authority competent for Switzerland, a translation into a working language shall be filed at the same time.

(4) The IPI shall not examine whether the patent application and the translation meet the other conditions specified in the Patent Cooperation Treaty, in particular the requirements of form valid for international applications.

(5) The international-type search shall be carried out based on the technical documents, modified where necessary, during the examination on filing and examination as to form (Articles 46 to 50).

(6) The international-type search is carried out on request based on the technical documents produced in English, if the technical documents meet the other requirements set out in Articles 46 to 50.

127. Procedure
(1) If the conditions specified in Article 126 is met, the IPI shall send the required documents to the International Searching Authority that is competent.

(2) The IPI shall send the search report to the applicant together with copies of the documents that are mentioned therein; a copy shall be included in the file of the patent application.
PART X SUPPLEMENTARY PROTECTION CERTIFICATES FOR MEDICINE and PHYTOSANITARY PRODUCTS

Chapter 1 Scope of Application

127a.
(1) This Part shall apply to supplementary protection certificates for medicine and phytosanitary products.

(2) The other provisions of this Ordinance shall be applicable except where Part VII of the Law or this Part provide otherwise.

Chapter 2 Application for Certificate

127b. Application; Fee
(1) The application shall contain:
(a) a request for grant of a certificate;
(b) a copy of the first official authorisation to market the product in Switzerland;
(c) a copy of the information concerning the medicinal product or the instructions for the phytosanitary product as authorised by the competent authority;

(2) The filing fee shall be paid within the time limit laid down by the IPI.

127c. Content of the Request
The request for grant of a certificate shall contain the following information:
(a) the name or company name of the applicant and their address, or an address for service in Switzerland, if necessary;
(b) if the applicant has nominated an agent, their name, address and an address for service in Switzerland, if necessary;
(c) the number of the patent on which the application is based (basic patent);
(d) The title of the invention protected by the basic patent;
(e) the date of the first official authorisation to market the product in Switzerland;
(f) an identification of the product designated by the authorisation to market together with its registration number;
(g) (Repealed)
127d. Publication of a Notice of Application
(1) A notice of the application shall be published.

(2) The following particulars shall be published:
(a) The name or business name of the applicant together with his address;
(b) Where appropriate, the name and address of the representative;
(c) The filing date of the application;
(d) The number of the basic patent;
(e) The title of the invention protected by the basic patent;
(f) The date of the first official authorization to market the product in Switzerland;
(g) A designation of the product covered by the authorization together with its registration number.

(3) Publication shall be made after completion of the examination under Article 127e.

Chapter 3 Examination of Application

127e. Examination on Filing of the Application
(1) On receiving the application, the Office shall examine whether it has been filed within the required period of time and whether it satisfies the conditions set out in Articles 127b and 127c.

(2) If the application does not satisfy the conditions set out in subsection (1), the IPI shall allow the applicant a period of two months to remedy it.

(3) If the latter time limit is not complied with, the IPI shall declare the application to be inadmissible.

127f. Examination of the Conditions for Issuing a Certificate
(1) The IPI shall examine whether the conditions required for the issue of a certificate (Articles 140b and 140c(2) and (3) of the Law) have been satisfied.

(2) If the conditions have not been satisfied, the IPI shall reject the application.
Chapter 4 Grant of Certificate

127g.
(1) If the conditions for grant of a certificate have been satisfied, the IPI shall grant a certificate and enter it in the Patent Register.

(2) The grant of a certificate shall be published together with the following information:
   (a) The number of the basic patent together with an addition;
   (b) The name or business name of the holder of the certificate together with his address;
   (c) Where appropriate, the name and address of the representative;
   (d) Filing date of the application;
   (e) The number of the basic patent;
   (f) The title of the invention protected by the basic patent;
   (g) The date of the first official authorization to market the product in Switzerland;
   (h) A designation of the product covered by the authorization together with its registration number;
   (i) The date of expiry of the term of protection of the certificate.

Chapter 5 Publication of Rejection of the Application for a Certificate, of the Premature Lapse of the Certificate, of its Invalidity or of its Suspension

127h.
(1) The rejection of an application for a certificate, the premature lapse of a certificate, its invalidity or its suspension shall be published.

(2) The following information shall be published:
   (a) the number of the basic patent together with an addition, except where the application for a certificate has been rejected;
   (b) the name or business name of the applicant or of the holder of the certificate together with his address;
   (c) the number of the basic patent;
   (d) the title of the invention protected by the basic patent;
   (e) the date of the first official authorization to market the product in Switzerland;
   (f) a designation of the product covered by the authorization together with its registration number;
(g) the date of the rejection of the application for a certificate, 
the premature lapse of the certificate, its invalidity or its 
suspension.

Chapter 6 File and Register

127i. File

(1) The file of the certificate shall be annexed to the file of the 
basic patent.

(2) The file of the certificate may be freely consulted.

(3) The certificate shall be given the number of the basic patent 
together with an addition.

127k. Register

(1) Entries concerning a certificate shall be shown on the page of the 
register that concerns the basic patent.

(2) The following information shall be shown thereon:
   (a) The number of the basic patent together with an addition;
   (b) The name or business name of the holder of the certificate together 
       with his address;
   (c) Where appropriate, the name and address of the representative;
   (d) The filing date of the application;
   (e) The number of the basic patent;
   (f) The title of the invention protected by the basic patent;
   (g) The date of the first official authorization to market the product 
in Switzerland;
   (h) A designation of the product covered by the authorization together 
       with its registration number;
   (i) The date of grant of the certificate;
   (k) The date of expiry of the term of protection of the certificate;
   (l) Any rights assigned and any restrictions on the right of disposal 
       ordered by the courts or by the enforcement authorities;
   (m) Amendments concerning the existence of the certificate or of the 
       right to a certificate;
   (n) Changes of domicile or place of business of the holder of a 
       certificate;
   (o) Changes of representative or of his domicile or place of business.
(3) The IPI may provisionally or definitively enter other particulars as it deems necessary.

(4) Entries concerning rights assigned in the basic patent or any restrictions to the right to dispose of the patent ordered by the courts or by the enforcement authorities shall be presumed valid for the certificate to the same extent as for the basic patent.

Chapter 7 Fees

127l. Annual Fees

(1) Where an annual fee to be paid does not concern a full year, its amount shall be the equivalent, for each full or commenced month of the term of the certificate, of one-twelfth of the annual fee that would be due for the year concerned, rounded up to the nearest franc.

(2) Annual fees shall become due on the last day of the month in which:
(a) the term of the certificate started;
(b) the certificate is issued, if the certificate is issued after the maximum term of the patent protection has expired.

(3) The annual fees shall be paid on the last day of the six months following their due date at the latest; a surcharge shall be levied if payment is made after the last day of the third month following the due date.

127m. Refund of Annual Fees

(1) In the event of invalidity of a certificate, the annual fees shall be refunded for the duration that has elapsed between the time the declaration of invalidity becomes final and the date on which the certificate would have expired.

(2) In the event of renunciation of a certificate, the annual fees shall be refunded as a proportion of the duration for which the holder has renounced the certificate.

(3) Where the official authorization to market a product is canceled, the annual fees shall be reimbursed as a proportion of the duration of the certificate for which the authorization is canceled.
(4) Where the official authorization to market the product is suspended, the annual fees shall be reimbursed as a proportion of the period for which the authorization is suspended.

(5) In all cases, only full annual fees shall be refunded.

(6) Fees shall only be refunded on request; the request shall be submitted within two months from:
(a) the declaration of invalidity of the certificate;
(b) renunciation of the certificate;
(c) cancellation of the official authorization under subsection (3);
(d) the end of the suspension of the official authorization under subsection (4).
PART XI FINAL PROVISIONS

Chapter 1 Repeal of Existing Law

128.
Ordinance (1) of December 14, 1959, and Ordinance (2) of September 8, 1959, on the Federal Patent Act are repealed.

Chapter 2 Transitional Provisions

129. Terms
Terms that began prior to January 1, 1978, shall remain unchanged.

130. Fees
(1) The amount of annual fees payable as from January 1, 1978, shall be governed by the new Law, even if the said annual fees have been paid prior to that date.

(2) For patent applications the filing date of which dates back more than two years before January 1, 1978, the annual fees shall be paid, in accordance with the new Law, within six months following a request to do so by the IPI.

(3) Subsection (2) shall apply mutatis mutandis to applications for patents of addition to a main patent the transformation of which is required as of January 1, 1978.

131. Applications for Patents of Addition
Applications for patents of addition that are pending on January 1, 1978, and are subordinate to patent applications that are also pending shall be regarded, as from that date, as independent applications.

132. Mention of the Inventor
If, for a patent application that is pending on January 1, 1978, the inventor has not yet been mentioned, he shall be mentioned within a period of three months from a request to do so by the IPI or, if the period provided for in Article 35(1) expires later, within that period.

133. Priority
(1) Declarations of priority relating to patent applications that are pending on January 1, 1978, may be filed up to March 31, 1978.
(2) For patent applications that are pending on January 1, 1978, the priority documents and the missing information concerning the number of the first filing shall, upon request to do so by the IPI, be produced within three months or, if the period provided for in Article 40(4) expires later, within that period.

(3) Subsections (1) and (2) shall not apply when, under the earlier Law, the period for the sending of the priority declaration or for the production of the priority document has expired on or has begun prior to January 1, 1978.

**134. Consultation of Files**
The files of patents granted prior to January 1, 1978, may not be consulted in accordance with Article 90(3) until after publication of the patent specifications.

**Chapter 3 Entry into Force**

**135.**
(1) This Ordinance shall enter into force on January 1, 1978, with the exception of Parts VII, VIII and IX.

(2) Part VII shall enter into force on June 1, 1978.

(3) Parts VIII and IX shall enter into force at the same time as Part VI of the Law (International Patent Applications).