SWITZERLAND

Patent Regulations

(Patent Ordinance, PatV1)

ENTER INTO FORCE since January 1, 2019

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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. Submission date for postal items

For postal items, the submission date is the date on which an item is handed over to Swiss Post for the attention of the IPI.

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 application for the grant of the patent (Art. 24), the certificate (Art. 127c (1)), the renewal of the certificate (Art. 127c (2)) or the pediatric certificate (Art. 127w) does not need to be signed. The IPI may determine other documents for which signature is not required.

4. Language

(1) Submissions to the IPI must be written in an official language of Switzerland.

(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) Evidence documents that are not in an official language of Switzerland need only be taken into account if a translation in an official language is available, subject to Articles 40(2), 45(3), 75(4) and 127p(3).

(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) As long as neither one nor the other has occurred, the IPI shall select a person as the recipient of delivery within the meaning of paragraph 1. If one of the other persons objects, the IPI shall request all parties to act pursuant to paragraph 1.

Chapter 2 Representation

8a.

(1) If an applicant or patent holder is represented before the IPI, the IPI may require a written power of attorney.

(2) A person who has been authorized by the applicant or patent holder to make all the declarations provided for in the Swiss Patent Act or in this Regulation towards the IPI and to receive communications from the IPI on its behalf shall be entered as a representative in the register pursuant to Article 93. If the IPI is not expressly notified of a limitation of the representation authorization, the authorization shall be deemed to be comprehensive.

Chapter 3 Terms

10. Calculation

(2) If a period is calculated in months or years, it shall end in the last month on the day bearing the same number as the day on which it began. If a corresponding day is missing, the period shall end on 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.

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) for the notification of the purpose of payment;

(2) If any of the requirements for continued processing are not met, the application for continued processing shall be denied.

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 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 finally. 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 payable pursuant to the Swiss Patent Act and this Regulation as well as the payment modalities are set out in GebV-IGE.

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;

(e) annual fees.

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.

18b. c. Failure to Comply with a Time Limit for Payment

(1) An application for which a renewal fee that is due has not been paid in due time shall not be acted upon; a patent for which a renewal fee that is due has not been paid in due time shall be cancelled in 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.

18c. 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.

18d. 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.

19. Patent Cancellation

The cancellation of a patent is free of charge.

20. Refund

(1) If an application is revoked in its entirety or rejected, or if it is not accepted, the IPI shall refund:
(a) any annual fee paid in advance but not yet due;
(c) the search fee in accordance with Articles 54(4);
(d) the examination fee, if the IPI has not yet begun the substantive examination.

(2) If a patent, for which an annual fee that is due has not been

paid in due time, is cancelled in the register, the annual fee shall be refunded.

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

(1) The request shall be submitted on the approved form by the IPI.

(2) If an otherwise formally valid application contains all the required information, the IPI may waive the submission of the form.

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;

(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.

(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 one. 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 61; 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.

(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.

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;

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 ten 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.

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 residence;

(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, as far as the time limit provided for in subsection (1) does not expire later.

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

37. Rectification

(1) The patent applicant or owner may request correction of the inventor's 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.

(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 suitable 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.

(5bis) 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 institution 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 the examination of the documents submitted shows that these do not at least meet the requirements of Article 46(1)(a) and (c), where applicable, in conjunction with Article 46(3), the IPI shall

not proceed with the 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) If the requirements of Article 46 are not fulfilled after the deadline pursuant to paragraph 2 has passed, the IPI shall not act on the application. It shall inform the applicant thereof, stating the reasons, and shall return the submitted documents to the applicant, provided that information is available enabling the applicant to be contacted.

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, as 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 form 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 deadline for the submission of the summary is not met, the application will not be acted upon.

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);
(c) if the required presentation has been used (Article 25 subsection (1) and (3)-(11) and Article 28).

(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 requests that the applicant remedy rectifiable shortcomings in priority declarations submitted in due time or priority documents submitted in due time. If the applicant does not comply with this request, the right of priority shall be forfeited.

(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 has not been paid with the application, the applicant must pay it within two months of being requested to do so by the IPI or within 14 months of the submission date or priority date, whichever is earlier. The application shall not be deemed to have been submitted until the search fee and the application fee have been paid.

53a. Claim Fees

(1) If the technical documents contain more than ten 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 considered for the search of the state of the art.

(4) The IPI shall prepare the state of the art report if the application is still pending at the IPI at the time when an application pursuant to Article 53 has been submitted. If the application is revoked or rejected after this date and the search has not yet been started, the IPI shall not issue 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 informs the applicant that it must pay a further search fee for each additional invention if the report is to cover that invention. It has set a deadline of one month for the applicant to do so.

(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

(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) At the request of the European Patent Office (EPO), the IPI may forward a copy of the state of the art report to the EPO.

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 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 does not publish a disclosure notice:
(a) if the application has not been acted upon or has been finally refused or revoked before the end of 17 months after the submission

or priority date;
(b) if the applicant has requested Rapid Procedure and the patent specification has been published before the date of publication of the disclosure notice (Art. 58a Swiss Patent Act);
(c) on an international application or on an application resulting from an international application;
(d) on an application resulting from the conversion of a European patent application, if the European patent application has already been published; or
(e) on divisional applications pursuant to Article 57 Swiss Patent Act.

Chapter 4 Examination as to Substance

SECTION 1 General Provisions

61a. Examination fee and claim fee.

(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 ten 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) If an application serves as the basis for claiming internal priority and the substantive examination has not yet been completed, the applicant may request that the substantive examination be suspended until the granting of the patent resulting from the later application.

(2) If the later application is not accepted or is finally revoked or rejected, the substantive examination shall be resumed.

(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 the carrying out of the substantive examination to be expedited. Until the end of 18 months after the submission or priority date, such an application may be submitted only if the formal requirements pursuant to Articles 46-52 are met.

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

(3) Before the end of the priority period pursuant to Article 17 Swiss Patent Act, the patent specification shall be published only at the request of the applicant.

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 as 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.

(2) 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.

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

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 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.

78. Multiple Oppositions

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

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 ground 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, a 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. Refund of the opposition fee

(1) If the opposition is approved, the objection fee is generally refunded to the objector; if the objection is partially approved, the objection fee is generally refunded on a pro rata basis.

(2) If justified by special circumstances, the IPI may waive the refund of the opposition fee, in particular if the opponent has willfully delayed the proceedings.

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 as 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.

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 may also inspect applications which have not been accepted or which have been rejected or revoked.

(2bis) At the request of the EPO, the IPI may forward a copy of the state of the art report to the EPO before the date referred to in paragraph 1 (Article 58(2)).

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

(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.

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) It shall retain the original or a copy of the files of applications which have not been accepted or which have been rejected or revoked for a period of five years from the date of non-acceptance, rejection or revocation, but for at least ten years from the date of submission.

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.

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;

(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.

(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) 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

(2) It shall be unconditional.

(3) It is subject to a fee.

97. 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.

98. 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).

98a. 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.

99. 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.

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:
(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.

(1bis) The application for registration of a license shall be

submitted by the patent holder or licensee.

(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.

(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.

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.

107a. Corrections

(1) Incorrect entries shall be corrected without delay at the request of the patent holder.

(2) If the error is due to an oversight on the part of the IPI, the correction shall be made ex officio.

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.

109. Patent Specification

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, as 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.

(1bis) 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 previously mentioned 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 consider, 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 as 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.

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.

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).

(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 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.

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 applies to supplementary protection certificates for active substances or combinations of active substances of medicinal products (certificates).

(2) Active ingredients or active ingredient combinations shall be referred to in this part as products.

(3) The other provisions of this Regulation shall apply unless otherwise provided in the seventh Title of the Swiss Patent Act or in this part.

Chapter 2 Application for granting of the certificate or for extension of the term of protection

127b. Content of the application and fee

(1) The application for the granting of the certificate must contain:
(a) the corresponding application;
(b) a copy of the first authorization of the medicinal product for Switzerland with the product for which the certificate is to be granted;
(c) a copy of the drug information approved by the Swiss Agency for Therapeutic Products.

(2) The application for the extension of the term of protection of the certificate must contain:
(a) the corresponding application;
(b) proof of when the application for authorization of the medicinal product for Switzerland was submitted with the product and the associated pediatric investigation plan (Art. 140n(1)(a) Swiss Patent Act);
(c) the confirmation of the Swiss Agency for Therapeutic Products pursuant to Article 140n(1)(a) Swiss Patent Act;
(d) proof of when the application pursuant to Article 140n(1)(b) Swiss Patent Act was submitted, or a declaration that no corresponding application older than the Swiss application has been submitted.

(3) The fee for the application for the certificate and the fee for the term of protection extension request must be paid within the time limit set by the IPI.

127c. Content of the Request

(1) 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 authorization pursuant to Article 127b(1)(b);
(f) the name of the product covered by the medicinal product authorization for Switzerland and its authorization number;

(2) The application for the extension of the term of protection of the certificate must also contain the following information:
(a) the date of the application for authorization of the medicinal product for Switzerland with the product and the associated pediatric investigation plan (Art. 140n(1)(a) Swiss Patent Act);
(b) the date of the application, if any, pursuant to Article 140n(1)(b) Swiss Patent Act, and the competent authority;
(c) if the application for the extension of the term of protection of the certificate is not submitted together with the application for granting the certificate: the number of the application for the granting of the certificate or the granted certificate and the information pursuant to paragraph 1 (a) and (b).

127d. Publication of information about applications
(1) In the case of applications for the certificate, the following information shall be published:
(a) the application number;
(b) the name or company name and address of the applicant;
(c) if applicable, the name and address of the representative;
(d) the application submission date;
(e) the basic patent number;
(f) the title of the invention protected by the basic patent;
(g) the date of authorization pursuant to Article 127b(1)(b);
(h) the name of the product covered by the authorization of the medicinal product for Switzerland and its authorization number.

(2) In the case of applications for the extension of the certificate's term of protection, the following information shall also be published:
(a) the application submission date;
(b) the date of the application for authorization of the medicinal product for Switzerland with the product and the associated pediatric investigation plan (Art. 140n(1)(a) Swiss Patent Act);
(c) the date of the application, if any, pursuant to Article 140n(1)(b) Swiss Patent Act, and the competent authority;

(3) Publication shall take place after the examination pursuant to

Article 127e has been completed.

Chapter 3 Examination of the application for the granting of the certificate or for the extension of the term of protection

127e. Examination upon submission of the application

(1) Upon receipt of the application, the IPI shall examine whether the deadline for submission has been observed and whether the requirements pursuant to Articles 127b and 127c have been met.

(2) If the requirements are not met, the IPI shall grant the applicant a period of two months to amend this.

(3) If this deadline is not met, the IPI shall not act on the application.

127f. Examination of the requirements for granting the certificate or extension of the term of protection

(1) The IPI shall examine whether the requirements for the granting of the certificate pursuant to Articles 140b and 140c(2) and (3) Swiss Patent Act are met.

(2) If the extension of the certificate’s term of protection is requested, the IPI shall examine whether the requirements pursuant to Article 140n Swiss Patent Act have been fulfilled.

(3) If the requirements pursuant to paragraph 1 or 2 are not met, the IPI shall reject the application.

Chapter 4 Granting of the certificate and extension of the term of protection

127g.

(1) The certificate is granted by its entry in the patent register.

(2) The following information shall be published:
(a) The number of the basic patent together with an addition;
(b) the name or the company name as well as the address of the certificate holder;
(c) if applicable, the name and address of the representative;
(d) the application submission date for granting the certificate;
(e) the basic patent number;
(f) the title of the invention protected by the basic patent;
(g) the date of authorization pursuant to Article 127b(1)(b);
(h) the name of the product covered by the authorization of the medicinal product for Switzerland and the authorization number of the medicinal product;
(i) the end date of the certificate's term of protection.

(3) The term of protection is extended by entering this in the patent register.

(4) The following information shall be published in addition to the information referred to in paragraph 2:
(a) the application submission date for the extension of the term of protection;
(b) the expiry date of the extension of the certificate’s term of protection;
(c) the date of the application for authorization of the medicinal product for Switzerland with the product and the associated pediatric investigation plan (Art. 140n(1)(a) Swiss Patent Act);
(d) the date of the application, if any, pursuant to Article 140n(1)(b) Swiss Patent Act, and the competent authority.

Chapter 5 Publication

127h.

If the application for the granting of the certificate or for the extension of the term of protection is rejected, if the extension is withdrawn, if the certificate expires prematurely, if it is declared null, or if it is suspended, the IPI shall publish the date of the rejection, withdrawal, premature expiry, declaration of nullity or suspension in addition to the information pursuant to Article 127g.

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 authorization pursuant to Article 127b(1)(b);
(h) the name of the product covered by the authorization of a medicinal product for Switzerland and its authorization number;
(i) the date the certificate was granted or the date of the extension of the certificate's term of protection;
(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 concerning the representative, including the domicile or registered office of the representative;
(p) the date of the application for authorization of the medicinal product for Switzerland with the product and the associated pediatric investigation plan (Art. 140n(1)(a) Swiss Patent Act);
(q) the date of the application, if any, pursuant to Article

140n(1)(b) Swiss Patent Act, and the competent authority;
(r) the date of the withdrawal.

(3) The IPI may enter or note any other information that it deems useful.

(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) If the application for the extension of the term of protection is submitted up to two months before the beginning of the term of the certificate, the annual fee for the extension of the term of protection is due at the same time as the other annual fees.

(4) If the application for extension of the term of protection is submitted less than two months before the beginning of the term of the certificate, the annual fee for the extension of the term of protection shall become due two months after receipt of the application.

(5) Annual fees shall be paid no later than the last day of the sixth month after the respective due date; if payment is made after the last day of the third month after the due date, a surcharge shall be paid.

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) If a certificate is waived, the annual fees shall be refunded for the portion of the certificate's term for which the certificate is waived.

(3) If the authorization pursuant to Article 127b(1)(b)is withdrawn, the annual fees shall be refunded for the part of the term of the certificate during which the authorization is withdrawn.

(4) If the authorization pursuant to Article 127b(1)(b) is suspended , the annual fees shall be refunded for the period during which the authorization is suspended.

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

(6) The refund shall only be made upon application, which must be submitted within two months from:
(a) the determination of the certificate's nullity;
(b) the waiving of the certificate;
(c) the withdrawal of the authorization pursuant to Article 127b(1)(b);
(d) the end of the suspension of the authorization pursuant to Article 127b (1)(b).

Chapter 8 Withdrawal of the extension of the certificate's term of protection

127n. Format and content of the application

(1) The application for the withdrawal of the extension of the certificate's term of protection pursuant to Article 140r(2) Swiss Patent Act shall be submitted in writing in two copies and shall contain the following information:
(a) the surname and first name or the company name as well as the address of the applicant and, if applicable, the applicant's domicile in Switzerland;
(b) the certificate number as well as the name of the product covered by the authorization of the medicinal product for Switzerland and its authorization number;
(c) the grounds for the application, stating all the facts and evidence relied upon in this regard.

(2) Documents cited by the applicant as evidence shall be attached.

(3) The withdrawal fee must be paid when the application is submitted.

(4) If several withdrawal applications are pending against the same extension, the IPI may combine its processing into one procedure.

127o. Examination of the application

(1) The IPI shall examine whether the requirements pursuant to Article 127n(1-3) have been met.

(2) If the requirements are not met, the IPI shall grant the applicant a period of two months to amend this.

(3) If the time limit pursuant to paragraph 2 for remedying a defect pursuant to Article 127n(1) or (3) is not observed, the IPI shall not act on the application.

(4) The IPI will not take into account documents that are cited as evidence but are not submitted within the deadline despite a request to do so.

127p. Language

(1) The withdrawal procedure shall be conducted in the language of the procedure for the granting of the certificate.

(2) The withdrawal application may also be submitted in another Swiss official language (Art. 4(1)).

(3) If the evidence is neither in a Swiss official language nor in English, the IPI shall order a translation into the language of the procedure within a reasonable period of time. If the translation is not submitted in due time, the IPI shall not be obliged to consider the evidence.

127q. Invitation to submit comments and further correspondence

(1) If the requirements pursuant to Articles 127n(1) and (3) are fulfilled, the IPI shall serve the withdrawal application on the certificate holder and invite it to comment thereon and, if necessary, to submit further documents. It shall grant the certificate holder a reasonable period of time.

(2) The comment of the certificate holder shall be sent to the applicant. If several withdrawal applications have been submitted, the IPI shall inform the applicant of the remaining applications.

(3) If the IPI considers it appropriate, it may invite the parties to a further exchange of correspondence.

127r. Final decision

If the files are ready for decision, the IPI shall order the extension of the term of protection be:

(a) withdrawn and the withdrawal application approved; or

(b) upheld and the withdrawal application denied.

127s. Registration and publication

(1) The withdrawal of the extension of the term of protection of the certificate shall be entered in the patent register and published by the IPI.

(2) The date of the withdrawal application and maintenance of the extension of the term of protection shall be published by the IPI.

127t. Refund of the withdrawal fee

(1) If the withdrawal application is approved, the revocation fee pursuant to Article 127n(3) shall, as a rule, be refunded to the applicant.

(2) If justified by special circumstances, the IPI may refrain from refunding the withdrawal fee, in particular if the applicant has willfully delayed the proceedings.

PART XI PEDIATRIC SUPPLEMENTARY PROTECTION CERTIFICATES FOR MEDICINAL PRODUCTS

Chapter 1 Scope

127u.

(1) This Part applies to pediatric supplementary protection certificates for active substances or active substance combinations of medicinal products (pediatric certificates).

(2) Active ingredients or active ingredient combinations shall be referred to in this part as products.

(3) The other provisions of this Regulation shall apply unless otherwise provided in the seventh Title of the Swiss Patent Act or in this Part.

Chapter 2 Application for the granting of the pediatric certificate

127v. Content of the application and fee

(1) The application for pediatric certification must include:
(a) the corresponding application;
(b) a copy of the authorization of the medicinal product for Switzerland with the product for which the certificate is to be granted and the associated pediatric investigation plan pursuant to Article 140t(1)(a) Swiss Patent Act;
(c) proof of when the application for authorization pursuant to letter b was submitted;
(d) the confirmation of the Swiss Agency for Therapeutic Products pursuant to Article 140t(1)(a) Swiss Patent Act;
(e) proof of when the application pursuant to Article 140t(1)(b) Swiss Patent Act was submitted, or a declaration that no corresponding application older than the Swiss application has been submitted;
(f) if applicable, the consent of the addressee pursuant to Article 140u(3) Swiss Patent Act.

(2) The fee for the pediatric certificate must be paid within the deadline set by the IPI.

127w. Content of the Request

The request for the pediatric certificate must include the following information:
(a) the name or company name and address of the applicant and, if applicable, the applicant’s domicile in Switzerland;
(b) if the applicant has appointed a representative, the name and address of the representative and, if applicable, the representative’s delivery address in Switzerland;
(c) the number of the basic patent on which the application is based;
(d) the title of the invention protected by the basic patent;
(e) the date of authorization pursuant to Article 127v(1)(b);
(f) the name of the product covered by the authorization of the medicinal product for Switzerland and its authorization number;
(g) the date of the application, if any, pursuant to Article 140t(1)(b) Swiss Patent Act, and the competent authority;
(h) the date of the authorization application pursuant to Article 127v(1)(b).

127x. Publication of information about applications

(1) The following information is published on applications for pediatric certification:

(a) the application number;

(b) the name or company name and address of the applicant;

(c) if applicable, the name and address of the representative;

(d) the application submission date;

(e) the basic patent number;

(f) the title of the invention protected by the basic patent;

(g) the date of authorization pursuant to Article 127v(1)(b);

(h) the name of the product covered by the authorization of the medicinal product for Switzerland and its authorization number;

(i) the date of the application, if any, pursuant to Article 140t(1)(b) Swiss Patent Act, and the competent authority;

(j) the date of the authorization application pursuant to Article 127v(1)(b).

(2) Publication shall take place after the examination pursuant to Article 127y has been completed.

Chapter 3 Examination of the application for the granting of the pediatric certificate.

127y. Examination upon submission of the application

(1) Upon receipt of the application, the IPI shall examine whether the submission deadline has been observed and whether the requirements pursuant to Articles 127v and 127w have been met.

(2) If the requirements are not met, the IPI shall grant the applicant a period of two months to amend this.

(3) If this deadline is not met, the IPI shall not act on the application.

127z. Examination of the requirements for the granting of the pediatric certificate.

(1) The IPI shall examine whether the requirements for the granting of the pediatric certificate pursuant to Articles 140t and 140u(2) and (3) Swiss Patent Act have been met.

(2) If these requirements are not fulfilled, the IPI shall reject the application.

Chapter 4 Granting of the pediatric certificate

127zbis.

(1) The pediatric certificate is granted by its entry in the patent register.

(2) The following information shall be published:

(a) The number of the basic patent together with an addition;

(b) the name or the company name as well as the address of the pediatric certificate holder;

(c) if applicable, the name and address of the representative;

(d) the application submission date for the pediatric certificate;

(e) the basic patent number;

(f) the title of the invention protected by the basic patent;

(g) the date of authorization pursuant to Article 127v(1)(b);

(h) the name of the product covered by the authorization of the medicinal product for Switzerland and its authorization number;

(i) the date of the application, if any, pursuant to Article 140t(1)(b) Swiss Patent Act, and the competent authority;

(j) the date of the authorization application pursuant to Article 127v (1)(b).

(k) the end date of the pediatric certificate's term of protection.

Chapter 5 Publication

127zter.

If the application for the granting of the pediatric certificate is rejected, if the certificate lapses prematurely, if it is declared null or if it is suspended, the IPI shall publish the date of rejection, premature lapse, declaration of nullity or suspension in addition to the information provided for in Article 127z paragraph 2.

Chapter 6 File and register

127zquater. File

(1) The pediatric certificate file shall be attached to the basic patent file.

(2) It is open for viewing by anyone.

(3) The pediatric certificate is assigned the basic patent number with an addition.

127zquinquies. Register

(1) The entries relating to pediatric certification shall be made on the page of the basic patent in the register.

(2) The following information shall be entered:
(a) The number of the basic patent together with an addition;
(b) the name or the company name as well as the address of the pediatric certificate holder;
(c) if applicable, the name and address of the representative;
(d) the application submission date;
(e) the basic patent number;
(f) the title of the invention protected by the basic patent;
(g) the date of authorization pursuant to Article 127v(1)(b);
(h) the name of the product covered by the authorization of the medicinal product for Switzerland and its authorization number;
(i) the date that the pediatric certificate was granted;
(j) the end date of the pediatric certificate's term of protection;
(k) rights granted as well as limitations on disposal by courts or enforcement authorities;
(l) changes to the existence of the pediatric certificate or to the right to the pediatric certificate;
(m) changes in the domicile or registered office of the pediatric certificate holder;
(n) changes concerning the representative, including the domicile or registered office of the representative;
(o) the date of the application, if any, pursuant to Article 140t(1)(b) Swiss Patent Act, and the competent authority;
(p) the date of the authorization application pursuant to Article 127v(1)(b).

(3) The IPI may enter or note any other information that it deems useful.

(4) Entries relating to the granting of rights to the basic patent and limitations on disposal ordered by courts or enforcement authorities with regard to the basic patent are presumed to apply to the pediatric certificate to the same extent as to the basic patent.

PART XII SUPPLEMENTARY PROTECTION CERTIFICATES FOR PLANT PROTECTION PRODUCTS

127zsexies. Scope

(1) This Part applies to supplementary protection certificates for active substances or active substance combinations of plant protection products.

(2) The other provisions of this Regulation shall apply unless otherwise provided in seventh Title of Swiss Patent Act or in Part X of this Regulation or in this Part.

127zsepties. Content of the application and fee

(1) The application for the granting of the supplementary protection certificate for plant protection products must contain:
(a) the corresponding application;
(b) a copy of the first official authorization for being put on the market in Switzerland;
(c) a copy of the instructions provided to the end user for the use of the plant protection products.

(2) The application fee for the supplementary protection certificate must be paid within the deadline set by the IPI.

127zocties. Other applicable provisions

Articles 127a(2), 127c(1), 127d(1) and (3), 127e, 127f(1) and (3), 127g(1) and (2), 127h, 127i, 127k, 127l(1), (2) and (5), and 127m shall apply mutatis mutandis.

PART XIII FINAL PROVISIONS

Chapter 1 Repeal of previous 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).