

# Patent Law

(of March 28, 1984)\*

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## Chapter I General

### 1.—

#### 1. For the purposes of this Law:

- “Paris Convention” shall mean the Convention for the Protection of Industrial Property signed in Paris on March 20, 1883, and adopted by the Law of July 5, 1884, including each of its revised Acts ratified by Belgium;
- “PCT” shall mean the Patent Cooperation Treaty done at Washington on June 19, 1970, and adopted by the Law of July 8, 1977;<sup>1</sup>
- “European Patent Convention” shall mean the Convention on the Grant of European Patents done at Munich on October 5, 1973, and adopted by the Law of July 8, 1977;<sup>2</sup>
- “Law of January 10, 1955,” shall mean the Law on the Disclosure and Implementation of Inventions and Manufacturing Secrets Concerning the Defense of the Territory and the Security of the State;
- “Law of August 4, 1955,” shall mean the Law on the Security of the State in the Field of Nuclear Energy;
- “European Patent Office” shall mean the European Patent Office set up by the European Patent Convention;
- “Minister” shall mean the Minister with responsibility for industrial property;
- “Office” shall mean the Industrial Property Office of the Ministry of Economic Affairs and, as regards the implementation of Sections 55 to 59, 61, 66 and 69, also the public services designated by the King under Section 14;

\* *French title:* Loi du 28 mars 1984 sur les brevets d'invention.

*Source:* *Moniteur belge*, March 9, 1985, p. 2774.

*Entry into force:* January 1, 1987, except for Sections 1, 59, 64, 65, 66(1), 69, 70 and 76(4), which entered into force on March 19, 1985.

\*\* Added by WIPO

<sup>1</sup> See *Industrial Property Laws and Treaties*, BELGIUM - Text 2-001.

<sup>2</sup> *Ibid.*

- “Register” shall mean the Patent Register;
  - “Collection” shall mean the Patent Collection.
2. This Law shall not affect any provisions of treaties or conventions applicable in Belgium.

## Chapter II Patents

### Part 1 General Provisions

#### 2.–

Under the conditions and within the limits set out by this Law, there shall be afforded under the name of “patent for invention,” hereinafter referred to as “patent,” an exclusive right limited in time for the exploitation of any invention that is new, that involves an inventive step and that is capable of industrial application.

#### 3.–

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

- (1) discoveries, scientific theories and mathematical methods;
- (2) aesthetic creations;
- (3) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;
- (4) presentations of information.

2. The provisions of paragraph 1 shall exclude patentability of the subject matter or activities referred to in that provision only to the extent to which a patent application or a patent relates to such subject matter or activities as such.

#### 4.–

1. The following shall be excluded from the protection afforded by this Law:

- (1) new plant varieties of species or varieties covered by the protection set up by the Law of May 20, 1975, for the protection of new plant varieties;
- (2) animal varieties;
- (3) essentially biological processes for the production of plants or animals.

The present provision shall not apply to microbiological processes or to the products obtained thereby.

2. Patents shall not be granted for inventions the publication or exploitation of which would be contrary to public policy or morality, provided that the exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation.

#### 5.–

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

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

3. Additionally, the content of Belgian patent applications and of European or international patent applications designating Belgium as filed, of which the dates of filing are prior to the date referred to in paragraph 2 and which were published on or after that date, shall be considered as comprised in the state of the art.

4. The provisions of paragraphs 1 to 3 shall not exclude the patentability of any substance or composition, comprised in the state of the art, for use in a method referred to in Section 7.2, provided that its use for any method referred to in that paragraph is not comprised in the state of the art.

5. A disclosure of the invention shall not be taken into consideration if it occurred no earlier than six months preceding the filing of the patent application and if it were due to, or in consequence of:

- (a) an evident abuse in relation to the applicant or his legal predecessor; or
- (b) the fact that the applicant or his legal predecessor has displayed the invention at an official, or officially recognized, international exhibition falling within the terms of the Convention on International Exhibitions signed at Paris on November 22, 1928, and on condition that the applicant states, when filing the patent application, that the invention has been so displayed and files a supporting certificate within the period and under the conditions laid down by the King.

**6.–**

An invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art. The documents within the meaning of Section 5.3 shall not be considered in deciding whether there has been an inventive step.

**7.–**

1. An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.

2. Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body shall not be regarded as inventions which are susceptible of industrial application within the meaning of paragraph 1. This provision shall not apply to products, in particular substances or compositions, for use in any of those methods.

## **Part 2**

### **The Right to a Patent**

**8.–**

The right to a patent shall belong to the inventor or his successor in title.

If two or more persons have made an invention independently of each other, the right to the patent shall belong to the person whose patent application has the earliest date of filing.

For the purposes of proceedings before the Office, the applicant shall be deemed to be entitled to exercise the right to the patent.

**9.–**

1. Where an application for the grant of a patent has been made either for an invention unlawfully taken from an inventor or his successors in title or in violation of a legal or contractual obligation, the injured party may, in his capacity as owner, claim the transfer of the application or of the granted patent, notwithstanding all other rights or proceedings.

2. Where the injured party is entitled only to a part of the application or of the granted patent, he may claim transfer in accordance with paragraph 1 in his capacity as co-owner.

3. The rights referred to in paragraphs 1 and 2 must be exercised at the latest within two years following the grant of the patent. This provision shall not apply where the owner of the patent knew at the time the patent was granted or acquired that he did not have a right to the patent.

4. The institution of legal proceedings shall be recorded in the Register. A final decision in such legal proceedings or abandonment of the proceedings shall also be recorded. Such entries shall be made by the clerk of the court hearing the case at the request of the plaintiff or of any interested party.

**10.–**

1. Where a complete change in the ownership of a patent application or a patent occurs as a result of legal proceedings under Section 9.4, licenses and other rights shall expire on entry of the entitled person in the Register.

2. Where, prior to the recording of the institution of legal proceedings,

- (a) the owner of the patent application or of the patent has worked the invention in Belgium or has made effective and serious preparations for that purpose, or where
- (b) a licensee has obtained and worked the invention on Belgian territory or has made effective and serious preparations for that purpose,

they may continue such working subject to requesting a non-exclusive license from the new owner of the patent application or of the patent entered in the Register. They shall be required to do so within the period of time laid down by the King. The license shall be granted for a reasonable period of time and under reasonable conditions.

3. The preceding paragraph shall not apply where the owner of the patent application or of the patent, or the licensee, acted in bad faith at the moment of beginning with the working or with the preparations for that purpose.

**11.–**

Sections 9 and 10 shall apply where a dispute as to ownership of a patent application or a patent is submitted to an arbitration tribunal.

**12.–**

The inventor shall have the right to be named as such in the patent; he may also oppose such naming.

### **Part 3 Granting of Patents**

**13.–**

Anyone wishing to obtain a patent shall be required to file an application. Such application must satisfy the conditions and formal requirements laid down by this Law and by the King.

**14.–**

Notwithstanding application of Chapter III of this Law, patent applications shall be filed with the Office, either in person or by post. They may also be filed in person with the public services of the Kingdom designated for that purpose by the King.

A record shall be drawn up, free of cost, by the official of the Office designated for that purpose by the Minister or by the responsible official of the public service, noting each filing and recording the day and time the documents are received. Where a filing is made in person, the record shall be signed by the applicant.

**15.–**

1. Patent applications shall contain:

- (1) a request for the grant of a patent addressed to the Minister;
- (2) a description of the invention;
- (3) one or more claims;
- (4) any drawings referred to in the description or the claims;
- (5) an abstract.

2. Each patent application shall be subject to payment of the filing fee; proof that such fee has been paid must reach the Office within one month of filing of the application at the latest.

**16.–**

1. Subject to the requirements of Section 14 having been met, the filing date of the patent application shall be the date on which documents filed by the applicant contain:

- (1) a statement that a patent is sought;
- (2) information identifying the applicant;
- (3) a description of the invention and one or more claims, even if the description and the claims do not comply with the other requirements of this Law and of its implementing decrees.

2. A patent application which does not meet the requirements under paragraph 1 of this Section shall not be accepted.

3. Notwithstanding application of the Laws of January 10, 1955, and August 4, 1955, the filing of patent applications shall be recorded in the Register.

**17.–**

1. A patent application must contain a description of the invention that is sufficiently clear and complete for it to be carried out by a person skilled in the art.

If an invention concerns the use of a microorganism which is not available to the public, a culture of the microorganism must be deposited with a body duly authorized by the King.

2. The claims shall define the matter for which protection is sought. They shall be clear and concise and be supported by the description.

3. Drawings shall be added if they are necessary to the understanding of the invention.

4. The abstract, accompanied as necessary by a drawing, shall merely serve for use as technical information; it may not be taken into account for any other purpose. It shall be subject to verification by the Office.

**18.–**

A patent application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

Any application that does not meet the requirements of the preceding paragraph must be divided within the prescribed time limit.

A divisional application may be filed only in respect of subject matter which does not extend beyond the content of the earlier application as filed; insofar as this provision is complied with, the divisional application shall be deemed to have been filed on the date of filing of the earlier application and shall have the benefit, where appropriate, to the right of priority of such earlier application.

Any patent application not divided in accordance with this Section shall be refused.

**19.–**

1. An applicant for a patent wishing to take advantage of the priority, under the Paris Convention, of a previous application shall file a declaration of priority and a copy of the previous application in accordance with the conditions and within the time limits laid down by the King.

The previous application may be constituted by a regular earlier filing of a Belgian patent application or of a European or international patent application designating Belgium.

A right of priority deriving from an earlier filing made in a State not party to the Paris Convention may only be claimed, under the conditions and with effect equivalent to that laid down in that Convention, insofar as that State, by virtue of an international agreement, grants, on the basis of a first filing of a Belgian patent application or of a European or international patent application designating Belgium, a right of priority under conditions and having effects equivalent to those under the Paris Convention.

2. Multiple priorities may be claimed in respect of a patent application, notwithstanding the fact that they originated in different States. Where appropriate, multiple priorities may be claimed for any one claim. Where multiple priorities are claimed, time limits which start from the date of priority shall run from the earliest date of priority.

3. If one or more priorities are claimed in respect of a patent application, the right of priority shall cover only those elements of the patent application that are included in the application or applications whose priority is claimed.

4. If certain elements of the invention for which priority is claimed do not appear in the claims formulated in the previous application, priority may nonetheless be granted, provided that the documents of the previous application as a whole specifically disclose such elements.

5. The right of priority shall have the effect that the date of priority shall count as the date of filing of the patent application for the purposes of Section 5.2 and 5.3.

6. Each claim to priority shall be subject to a fee to be paid within the time limits and according to the conditions laid down by the King.

7. Failure to comply with the time limits, conditions and terms laid down by the present Section shall automatically lead to the loss of the right of priority for the patent application involved.

**20.–**

1. Where the patent application complies with the requirements of Section 16 but does not comply with the other statutory or regulatory requirements, the applicant may regularize the application within the prescribed time limit and on payment of a fee. On expiry of such time limit, any non-regularized application shall be refused.

2. A patent application shall be deemed never to have had effect when it has been withdrawn or when it has been refused by a decision from which no further appeal is possible. This provision shall not affect the provisions of the Paris Convention relating to acquisition of the right of priority.

**21.–**

1. A search report in respect of the invention shall be drawn up as a result of the patent application.

2. The search report shall be drawn up by an intergovernmental body designated by the King.

The report shall be drawn up on the basis of the claims, taking into account the descriptions and, as appropriate, any drawings. It shall cite those elements of the prior art that may be taken into consideration in deciding whether the invention is new and involves an inventive step.

3. The applicant shall be required to pay a search fee within the time limits and according to the conditions laid down by the King.

4. The Office shall advise the applicant of the forthcoming expiry of the time limit within which he must pay the search fee and of the consequences of failure to pay that fee. A copy of the notification shall be communicated by the Office to any usufructuary, pledgee, distrainer or licensee entered in the Register.

A copy of the notification shall also be communicated by the Office to any person whose action claiming the patent application is entered in the Register.

Notwithstanding paragraph 3 of this Section, the claimant may pay the search fee within the time limit stated in that paragraph. If the owner of the patent application also pays the fee, the Office shall reimburse to the claimant the fee he has paid.

In the event of refusal or abandonment of the claim, the claimant who has paid the search fee may not claim reimbursement of such fee, either from the Office or from the owner of the patent application where the latter has failed to pay the fee.

Notifications and copies shall be sent by the Office to the last known address of the parties concerned. Failure to send or receive such notifications and copies shall not create an exemption from payment of the search fee within the prescribed time limit nor can it be invoked before the Courts or in respect of the Office.

5. The Office shall communicate the search report to the applicant who may file a new wording of the claims and of the abstract. The new wording of the claims may not go beyond the scope of the patent application. On request, an applicant who has filed a new wording of the claims may be authorized by the Office to amend the description solely to eliminate those elements that would no longer agree with the new claims.

6. The King shall lay down the conditions and time limits for drawing up the search report and for amending the claims, the descriptions and the abstract.

7. If the invention for which a patent application has been filed is subject to the Law of January 10, 1955, or the Law of August 4, 1955, the procedure laid down by the present Section may not be initiated until the secrecy covering the invention has been lifted, notwithstanding the application of the third subparagraph of Section 22.2.

8. Where a search report drawn up by the intergovernmental body referred to in paragraph 2, in respect of an invention that is identical with one for which a patent application has been filed in Belgium, has been produced prior to expiry of the time limit laid down for paying the search fee referred to in paragraph 3 under the granting procedure for a foreign patent, the King may decide that such search report may be used, under conditions laid down by Him, at the request of the applicant, in the Belgian patent granting procedure.

9. At the request of the applicant, addressed to the Office within the time limit referred to in paragraph 3, the Office shall submit the invention for which a patent application has been filed to an international type search under Article 15(5)(a) of the PCT. Such search shall be deemed to constitute the search in respect of the invention referred to in paragraph 1.

Filing of the request shall be subject to payment of a fee.

**22.–**

1. Subject to Section 39.3, accomplishment of the formalities laid down for granting a patent shall be confirmed by a ministerial decision. Such decision shall constitute the patent.

2. The decision shall be issued as soon as possible following expiry of a period of 18 months as from the filing date of the patent application or, if the priority right under the Paris Convention has been claimed in accordance with Section 19, as from the earliest priority stated in the priority declaration.

The applicant may request that the decision be issued as soon as the formalities laid down for granting a patent have been accomplished.

The preceding subparagraphs shall also apply where, within a period to be laid down by the King beginning at the date of filing of the patent application, an applicant whose invention is subject to the Law of January 10, 1955, or the Law of August 4, 1955, informs the Office in writing of his decision not to pay the search fee under Section 21.3. This subparagraph shall not apply, however, if within the period referred to herein proceedings claiming ownership of the patent application have been entered in the Register.

3. Patents shall be granted without prior examination of the patentability of the inventions, without guarantee of the value of the inventions or of the exactness of their description, at the applicant's own risk.

4. Notwithstanding the application of the Laws of January 10, 1955, and August 4, 1955, the granting of patents shall be recorded in the Register.

**23.–**

On the date of granting of a patent, subject to application of the Law of January 10, 1955, and the Law of August 4, 1955, the patent file shall be made available to the public at the Office. As from such date, copies may be obtained under the conditions and in the form laid down by the King.

The file shall comprise, in particular, the ministerial decision to grant, the description of the invention, the claims, any drawings to which the description refers and, as appropriate, the search report, any new wording of the claims, the amended description and any documents relating to a claim to priority under the Paris Convention.

**24.–**

The exclusive right under Section 2 shall take effect as of the day on which the patent is made available to the public.

**25.–**

1. The manner in which the Register shall be kept shall be determined by the Minister. Entries in the Register shall be reported in the Collection. The Register shall be open to public inspection at the Office.

2. The Office shall publish granted patents in full. They shall also be published in substance in the Collection.

The King shall lay down the terms of subscriptions to the Collection.

## **Part 4**

### **The Rights and Obligations Deriving from Patents and Patent Applications**

**26.–**

The extent of the protection conferred by a patent shall be determined by the terms of the claims. Nevertheless, the description and the drawings shall be used to interpret the claims.

When the subject matter of the patent is a process, the rights conferred by the patent shall extend to the products directly obtained by such process.

**27.–**

1. The patent shall confer on its owner the right to prevent all third parties not having his consent:

- (a) from making, offering, putting on the market or using a product which is the subject matter of the patent, or importing or stocking the product for those purposes;
- (b) from using a process which is the subject matter of the patent or, when the third party knows, or it is obvious in the circumstances, that the use of the process is prohibited without the consent of the owner of the patent, from offering the process for use on Belgian territory;
- (c) from offering, putting on the market, using, or importing or stocking for those purposes the product obtained directly by a process which is the subject matter of the patent.

2. The patent shall also confer on its owner the right to prevent all third parties not having his consent from supplying or offering to supply on Belgian territory a person other than parties entitled to exploit the patented invention with means, relating to an essential element of that invention, for putting it into effect, when the third party knows, or it is obvious in the circumstances, that those means are suitable and intended for putting that invention into effect.

The preceding subparagraph shall not apply when the means are staple commercial products, except when the third party induces the person supplied to commit acts prohibited by paragraph 1.

Persons performing the acts referred to in Section 28(a) to (c) shall not be considered to be persons entitled to exploit the invention within the meaning of paragraph 1.

**28.–**

1. The rights conferred by the patent shall not extend to:

- (a) acts done privately and for non-commercial purposes;
- (b) acts done for experimental purposes relating to the subject matter of the patented invention;
- (c) the extemporaneous preparation for individual cases in a pharmacy of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared;
- (d) the use on board vessels of countries of the Paris Union for the Protection of Industrial Property, other than Belgium, of the subject matter of the patented invention in the body of the vessel, in the machinery, tackle, gear and other accessories, when such vessels temporarily or accidentally enter waters of Belgium, provided that the said subject matter is used exclusively for the needs of the vessel;
- (e) the use of the subject matter of the patented invention in the construction or operation of aircraft or land vehicles of countries of the Paris Union for the Protection of Industrial Property other than Belgium, or of accessories of such aircraft or land vehicles, when those aircraft or land vehicles temporarily or accidentally enter Belgian territory;
- (f) acts covered by Article 27 of the International Civil Aviation Convention of December 7, 1944, when such acts concern aircraft of a State, other than Belgium, enjoying the provisions of that Article.

2. The rights conferred by a patent shall not extend to acts concerning a product covered by that patent which are done on Belgian territory after that product has been put on the market in Belgium by the owner of the patent or with his express consent.

**29.–**

Reasonable compensation appropriate to the circumstances may be demanded by the patent applicant from any third party who, between the day on which the patent application was made available to the public at the request of the applicant, or a copy of the application was made available to the third party involved, and the date on which the patent was granted, has exploited the invention in a manner which would be prohibited after that period by reason of the patent.

The copy referred to in the first subparagraph must be certified by the Director of the Office or his representative.

Failing agreement between the parties, the compensation shall be determined by a Court whereby the latter may also order such measures as it deems necessary to safeguard the interests of the patent applicant and of the third party.

The extent of the protection conferred by the patent application shall be determined by the most recent claims filed with the Office. After grant of the patent, the third party may request reimbursement of the compensation paid insofar as the final wording of the claims has restricted the scope of the initial claims.

Usufructuaries of the patent application may rely on the provisions of this Section.

When the patent application has been made available to the public as the result of a request addressed to the Minister, this fact shall be recorded in the Register.

Legal proceedings for compensation and for reimbursement shall be barred after five years as from termination of the exploitation of the invention or the date of granting of the patent, respectively.

### 30.–

1. Any person who, prior to the filing date or priority date of the patent, in good faith, used or possessed on Belgian territory the invention that is the subject matter of the patent shall, despite the existence of the patent, enjoy a personal right to exploit that invention.

2. The rights conferred by the patent shall not extend to acts in respect of the product covered by the patent carried out on Belgian territory after the product has been put on the market in Belgium by the person enjoying the right referred to in paragraph 1.

3. The rights granted by this Section may only be transferred together with the business to which they belong.

### 31.–

1. The Minister may grant, in accordance with Sections 32 to 34, a license to exploit an invention covered by a patent:

- (1) when a period of four years from the date of filing of the patent application or three years from the date of the grant of the patent, whichever period expires last, has elapsed without the patented invention having been exploited by means of effective and continuous working in Belgium and without the owner of the patent having justified his inaction by legitimate reasons.

In the case of a patent whose subject matter is a machine, effective and continuous manufacture in Belgium by the owner of the patent or products obtained by means of that machine may be deemed to constitute exploitation of the patented invention in Belgium, when such fabrication would appear more important for the economy of the country than the fabrication of the machine itself.

A compulsory license may not be granted on the grounds of failure to work or insufficient working if the product covered by the Belgian patent, manufactured in a State party to the same union or economic community as Belgium, is put on the market on the Belgian territory in sufficient quantity to satisfy national needs;

- (2) when an invention covered by a patent owned by the applicant for the license cannot be exploited without infringing the rights deriving from a patent granted on an earlier filing, insofar as the defendant patent possesses particular technical importance.

2. The applicant for a license must prove:

- (1) that in the cases referred to in the preceding paragraph:
  - (a) one of those provisions applies to the owner of the patent;
  - (b) he has applied in vain to the owner of the patent for a voluntary license;
- (2) in addition, when the license is claimed under item (1) of the above paragraph, that he possesses, should a license be granted to him, the necessary means to undertake effective and continuous fabrication in Belgium in accordance with the patented invention.

3. Any action for infringement of an invention covered by a patent in respect of which a compulsory license has been requested and which has been instituted against the applicant for such license shall stay the

license-granting procedure until such time as the judgment or decision becomes final. If the infringement is confirmed, the application for a compulsory license shall be refused.

4. The laws concerning the granting of licenses to work patented inventions in special fields, particularly defense and atomic energy, shall be of application.

**32.-**

1. Compulsory licenses granted in application of Section 31 shall not be exclusive.

2. Notwithstanding the second sentence of Section 31.1(1), a license granted in application of the said item (1) of paragraph 1 shall confer on the licensee only the right to exploit the patented invention by effective and continuous fabrication in Belgium. The Minister shall determine the time limit within which such fabrication must be achieved, whereby such application shall make full use of any process claimed in the patent.

A compulsory license may be limited in time or to a part only of the invention where the latter enables objects to be made other than those required to satisfy the needs referred to in Section 31.1.

Once a compulsory license has been granted, the relationships between the owner of the patent and the licensee shall be assimilated, except as otherwise provided in the decision to grant, to those existing between a contractual licensor and licensee.

3. A license granted under Section 31.1(2) shall be limited to that part of the invention covered by the dominant patent that has to be used in order to exploit the dependant patented invention and shall only permit such utilization in conjunction with the said exploitation.

The third subparagraph of paragraph 2 of the present Section shall apply to compulsory licenses.

The owner of a patent on whom a compulsory license is imposed may, if both inventions concern the same field of industry, obtain the grant of a license in respect of the patent on which the applicant for the compulsory license has based his request.

**33.-**

1. In the cases referred to in Section 31.1, the Minister shall grant compulsory licenses on request.

2. The request shall be transmitted by the Minister to the Compulsory License Commission to enable the latter to hear the parties, to reconcile them if possible and, where not possible, to furnish the Minister with a reasoned opinion on the justification for the application. The Commission shall attach the file relating to the case to its opinion.

The Minister shall decide on the request and shall notify his decision to the parties by registered letter.

3. In the case referred to in Section 31.1(2), an application for a compulsory license shall be declared justified if the owner of the dominant patent disputes neither the dependancy of the patent belonging to the applicant for a license, nor its validity, nor its special technical value.

If the owner of the earlier patent denies dependency of the patent belonging to the applicant for a license, the latter shall automatically be authorized to exploit the invention described in his own patent and also the so-called dominant invention without infringement proceedings being instituted against him by the owner of the earlier patent.

Contestation of the validity of the dependant patent shall suspend the administrative procedure relating to recognition of the justification of the application for a license if either nullity proceedings in respect of that patent have already been instituted before the competent court by the owner of the dominant patent or the latter has cited the applicant for a license before a court within two months of his being notified that the application for a license had been filed.

Contestation of the special technical value of the dependant patent shall suspend the administrative procedure relating to recognition of the justification of the application for a license on condition that the owner of the dominant patent submits, within two months of his being notified of the fact that an application for a license had been filed, a petition to the court acting in chambers. The judicial decision shall not be subject to appeal or opposition.

Failure to comply with the time limits laid down in the two preceding subparagraphs shall preclude the owner of the dominant patent from submitting his contestation to a Court.

**34.–**

1. Within four months of notification of the decision, the owner of the patent and the applicant for a license shall conclude a written agreement setting out their reciprocal rights and obligations. The Minister shall be informed thereof. Failing agreement within the above-mentioned time limit, the reciprocal rights and obligations shall be laid down by the court acting in chambers at the request of either party.

A copy of the final judgment shall be immediately communicated to the Minister by the clerk of the court.

2. The Minister shall grant a license by means of a reasoned decision.

The compulsory license and the relevant decisions shall be recorded in the Register.

The decision shall be published in the *Moniteur belge/Belgisch Staatsblad* and reported in the Collection.

**35.–**

1. There shall be set up within the Central Council of the Economy a Compulsory License Commission with responsibility for the tasks allotted to it by Sections 33, 36, 37 and 38.

The Commission shall comprise, in addition to the chairman, eight members appointed by the Minister.

Six members shall be nominated in equal numbers by:

(a) on the one hand, the organizations representing industry, agriculture, commerce and the small and medium-sized industrial undertakings;

(b) on the other, the organizations representing the workers and the consumer cooperatives;

Two of the three members nominated by each of the groups referred to in items (a) and (b), above, must be members of the Central Council of the Economy.

Two members shall be nominated on the joint proposal of the groups referred to in items (a) and (b), above, from among the members of the Industrial Property Council.

The Commission shall comprise a number of alternate members equal to that of its standing members. An alternate shall only have a vote when he replaces a standing member of his group.

The Commission shall be chaired by the Chairman of the Central Council of the Economy. When the latter is unavailable, the chair shall be taken by the Secretary of the Council who shall also be Secretary of the Commission. The Chairman shall have a vote.

The secretariat of the Commission shall be provided by the secretariat of the Central Council of the Economy.

The term of office of a member of the Commission shall correspond to that of members of the Central Council of the Economy and shall expire at the same time as the term of office of the latter. It shall be renewable.

When the Council replaces a standing or alternate member, the person appointed shall complete the term of office of his predecessors.

The Commission shall establish its own rules of procedure, which shall be subject to approval by the Central Council of the Economy.

The Commission can only act validly if at least one half of its members are present. Following a second convocation, however, the Commission may validly act whatever the number of members present. Opinions and decisions shall be adopted on a simple majority. In the event of equal votes, the Chairman's vote shall be decisive.

The Commission's opinions and decisions shall be reasoned.

2. The King shall appoint to the Compulsory License Commission from among those members of the prosecution department at the courts and tribunals having at least five years' service a Commissioner–Rapporteur together with two Deputy Commissioners carrying out the same task under the supervision and direction of the Commissioner–Rapporteur.

Their term of office shall be five years; it shall be renewable.

The King shall lay down the amount of the attendance counters and the leave allowances allocated to the Commissioner–Rapporteur and the Deputy Commissioner–Rapporteurs as well as any allowances for travel and subsistence costs.

The Commissioner–Rapporteur shall collect all information, receive all written or oral statements or testimonies, have communicated to him, whoever the holder, all documents or items of information he may consider necessary to fulfill his task, make the necessary verifications on the spot, appoint experts and determine their task.

He shall be entitled to order searches within the limits set out hereafter. He shall have free access to all premises and places where he has reason to believe he will find documents or items of information that he deems necessary to examine the case.

He may only carry out a seizure on the spot and he may not affix seals.

He may only carry out searches in private quarters at the place of residence of heads of enterprises, administrators, managers, directors and accountants and may only do so between sunrise and sunset. He must be accompanied by one of the State officials designated by the King.

In fulfilling his task, he may requisition members of the police.

Notwithstanding the special laws that guarantee the secrecy of statements, public authorities shall be required to give their assistance to the Commissioner–Rapporteur in the fulfillment of his task, particularly the communication of any document and items of information requested of them.

The Commissioner–Rapporteur shall be assisted in his examination by the State officials designated for that purpose by the King.

In the fulfillment of their examining task, the officials referred to in the preceding subparagraph shall be empowered to collect all documents that will serve such purpose. They may also hear any person capable of furnishing useful information.

However, searches may only be carried out by at least two officials acting together and with the prior authorization of the Commissioner–Rapporteur.

In fulfilling the tasks entrusted to them by the Commissioner–Rapporteur, those officials shall be under his supervision.

3. The Commissioner–Rapporteur shall submit his report to the secretariat of the Compulsory License Commission and attach thereto his opinion. The Commission shall not issue its opinion before having heard the owner of the patent and, when appropriate, the person who has requested or obtained the grant of a compulsory license. These persons may be assisted or represented either by a lawyer or by a person specially approved by the Commission in each case. The Commission shall also hear the experts and other persons it deems useful to question. It may instruct the Commissioner–Rapporteur to obtain additional information.

One month at least before the date of the meeting of the Commission, the Secretary shall notify by registered letter those persons who are to be heard during the meeting. In urgent cases, the time limit may be reduced by half.

4. Any hindrance or voluntary impediment to the fulfillment of the task entrusted by this Law to the Commissioner–Rapporteur and to the officials referred to in the tenth subparagraph of paragraph 2 of this Section shall be punishable by a term of imprisonment of between eight days and three months and a fine of between 26 francs and 10,000 francs or one of those penalties only.

False declarations shall be subject to the same penalties.

The following, in particular, shall be considered to willfully impede or hinder fulfillment of the tasks:

- (1) those who refuse to provide information or documents requested of them;
- (2) those who knowingly provide incorrect information or documents.

Book I of the Penal Code, not excepting Chapter VII and Section 85, shall apply to the offenses referred to in this paragraph.

5. The operating cost of the Compulsory License Commission shall be borne by the budget of the Central Council of the Economy.

### 36.–

In the event of new factors arising, the owner of the patent or the licensee may request a review of the decisions taken as regards their reciprocal obligations and of the terms of exploitation, as appropriate. The powers to carry out a review shall belong to the authority from which the decision came and the procedure to be adopted shall be the same as that laid down for taking the decision that is subject to review.

**37.–**

1. At the request of the owner of the patent, the Minister shall withdraw the compulsory license if it emerges from a final judgment that the licensee has been guilty, in respect of the owner of the patent, of an unlawful act or that he has failed to fulfill his obligations.

2. At the request of any interested party, the Minister may withdraw a granted compulsory license for lack of working if, on expiry of a time limit laid down by the Minister in respect of working, the licensee has not exploited the patented invention in Belgium by means of effective and continuous fabrication.

3. The Minister shall submit decisions on withdrawal to the Compulsory License Commission for its opinion.

The withdrawal shall be contained in a reasoned decision. Where appropriate, the decision shall give the reason why the opinion of the Commission has not been followed.

The withdrawal decision shall be published in extract in the *Moniteur belge/Belgisch Staatsblad* and recorded in the Collection.

**38.–**

The holder of a compulsory license may not transfer to third parties by assignment or sublicense the rights deriving from the license except with that part of the undertaking or the business devoted to working of the license. Section 45 shall apply *mutatis mutandis*.

**39.–**

1. A patent shall expire at the end of the twentieth year as from the filing date of the application, subject to payment of the renewal fees referred to in Section 40.

2. Subject to payment of the renewal fees, the patent shall expire, however, at the end of the sixth year as from the filing date of the application if the applicant does not pay within the prescribed time limits the search fee laid down in Section 21.3 or, where appropriate, if he has not supplied to the Office, before expiry of that time limit, the search report referred to in Section 21.8.

3. In the case referred to in Section 21.7, insofar as the patent applicant does not avail himself of the option offered in the third subparagraph of Section 22.2 and the secrecy affecting the invention is lifted more than six years after the filing date of the patent application, the latter shall cease to have effect, subject to payment of the renewal fees, on expiry of the time limit laid down for payment of the search fee, where that fee has not been paid.

**40.–**

1. With a view to its maintenance in force, renewal fees shall be payable for any patent application or patent as from the third year after the filing date of the application.

Renewal fees must be paid in advance. Payment shall be due on the last day of the month containing the anniversary of the date of filing of the patent application. Renewal fees may not be validly paid more than six months before they fall due.

When the renewal fee has not been paid by its due date, it may still be paid:

- (a) without an additional fee, within one month following the due date;
- (b) subject to an additional fee, within a period of grace of six months as from the due date of the renewal fee if that fee has not been paid within one month following the due date.

2. Failing payment of the renewal fee within the six-month period of grace provided for in the preceding paragraph, the owner of the patent application or of the patent shall automatically forfeit his rights. Forfeiture shall take effect on the due date of the unpaid renewal fee. The forfeiture shall be entered in the Register.

**41.–**

1. In the case referred to in Section 40.2, the owner of a patent application or a patent may request re-establishment of his rights if he can provide a legitimate reason for failure to pay the renewal fee.

2. The request for re-establishment may be addressed to the Minister within two months of the expiry of the period of grace provided for in Section 40.1. The request for re-establishment shall be entered in the Register.

If re-establishment is granted, it shall only have effect if the owner of the patent application of the patent pays, within a period of one month as from the date of the decision to re-establish, a supplementary fee equal to the amount of the fees remaining unpaid over and above the renewal fee and the additional fee.

Re-establishment shall be entered in the Register.

3. Whoever, between the time of the forfeiture of rights provided for in Section 40.2 and that at which the re-establishment of rights takes effect in accordance with paragraph 2 of this Section, uses in good faith in Belgium the invention covered by the patent or takes the necessary measures to that end may continue to use the invention for the purposes of his own undertaking. The right afforded by this paragraph may only be transferred with the undertaking to which it belongs. The Laws of January 10, 1955, and August 4, 1955, shall be of application.

The preceding subparagraph shall apply when the protection provided by the first paragraph of Section 29 resumes effect following re-establishment of the patent application.

#### 42.–

1. The owner of a patent may relinquish it by means of a written and signed statement addressed to the Minister; relinquishment may be limited to one or more claims under the patent. The declaration of relinquishment shall be entered in the Register.

2. Total relinquishment shall cause the patent to lapse as of the date of entry of the declaration in the Register. If at such date, the renewal fee for maintaining the patent in force has not yet been paid, however, lapse of the patent shall take effect at the end of the period covered by the last renewal fee that has been paid.

3. Partial relinquishment shall, as of the date of entry of the declaration in the Register, cause the rights deriving from the claim or claims that have been relinquished to lapse.

4. In the event of co-ownership, relinquishment, whether total or partial, shall be effected by all the co-owners.

5. If rights of usufruct, derived from a pledge or a license, have been entered in the Register, the patent may only be relinquished, in whole or in part, with the agreement of the owners of such rights.

6. A patent that is the subject of a claim in respect of ownership, a patent that has been seized or a patent that is the subject of a decision to grant a compulsory license may not be relinquished, either in whole or in part.

7. The provisions of this Section shall apply, *mutatis mutandis*, to patent applications.

## Part 5 The Patent and the Patent Application as Objects of Property

#### 43.–

1. Unless agreed otherwise, co-ownership of a patent application or of a patent shall be governed by the provisions of this Section.

2. Each co-owner shall have the right personally to exploit the invention.

No co-owner may burden a patent application or a patent with a right, grant a license to exploit or institute infringement proceedings without the agreement of the other co-owner or, failing agreement, the authorization of a court.

The indivisible shares shall be deemed equal.

If a co-owner wishes to assign his share, the other co-owner shall have a right of preemption for a period of three months from the notification of the intended assignment.

Either party may request the presiding judge to appoint an expert in accordance with the rules of judgments in chambers in order to determine the terms of assignment. The expert's conclusions shall bind the parties save when, within a month of their notification, one of the parties announces that he renounces the assignment, in which case that party shall bear the cost thereof.

3. Parts I and IV of Chapter VI of the First Title of Book III of the Civil Code shall not apply to co-ownership of a patent application or a patent.

4. A co-owner of a patent application or of a patent may notify the other co-owners that he relinquishes his share in their favor. Once such relinquishment has been entered in the Register, such co-owner shall be relieved of all obligations in respect of the other co-owners; the latter shall divide the relinquished share among them in proportion to their rights in the joint property, except when otherwise agreed.

**44.–**

1. Any assignment or transfer, whether in whole or in part, of a patent application or of a patent must be notified to the Office.

2. Assignment *inter vivos* of a patent application or of a patent must be effected in writing under pain of being declared void.

3. The notification referred to in paragraph 1 shall be accompanied by :

(1) either a certified copy of the instrument of assignment or of the official document recording the transfer of rights, or a certified extract from such instruments or such documents that is sufficient to prove transfer;

(2) proof that the fee has been paid.

4. Notifications shall be entered in the Register in their chronological order of receipt.

5. Subject to the case provided for in Section 9, transfer shall not affect rights acquired by third parties prior to the date of transfer.

6. Assignment or transfer shall not have effect in respect of the Office or in respect of third parties until its notification is entered in the Register, within the limits deriving from the instrument or document referred to in paragraph 3. However, prior to entry of the notification, assignment or transfer shall have effect with respect to third parties who acquired rights after the date of the assignment or transfer but who had knowledge thereof when acquiring such rights.

**45.–**

1. A patent application or a patent may form the subject, in whole or in part, of contractual licenses for all or a part of the Kingdom. Licenses may be exclusive or non-exclusive. They must be given in writing on pain of being declared void.

2. The rights conferred by a patent application or a patent may be relied on in respect of a licensee who has exceeded the limits of his license laid down in accordance with paragraph 1.

3. Section 44.5 shall apply to the granting of a license in respect of a patent application or of a patent.

4. The granting of a license in respect of a patent application or of a patent and any amendment made to the declaration referred to in the following subparagraph must be notified to the Office.

Notification shall be effected by filing a declaration signed by the parties. The King shall lay down the content and conditions of such declaration and shall fix the amount of the fee that will be charged prior to entry of the declaration in the Register.

5. The granting of a license in respect of a patent application or of a patent and any amendment made to the declaration referred to in the preceding paragraph shall not have effect in respect of the Office or in respect of third parties until the declaration or the amending declaration is entered in the Register and only within the limits deriving from those declarations. The second sentence of Section 44.6 shall be applicable.

6. The transfer of a license in respect of a patent application or of a patent must be effected in writing on pain of being declared void. It must be notified to the Office.

Section 44.3 to 6 shall apply, *mutatis mutandis*, to the transfer of a license.

**46.–**

1. Usufruct in respect of a patent application or of a patent and the pledging of a patent application or of a patent must be notified to the Office.

2. Section 44.3 to 6 shall apply, *mutatis mutandis*, to the rights referred to in the preceding paragraph.

**47.–**

Seizure of a patent application or of a patent shall be effected in accordance with the procedure applying to seizure of movable property.

A certified copy of a writ of seizure must be notified to the Office by the creditor carrying out the seizure; the seizure shall be entered in the Register.

Seizure shall mean that any subsequent amendment made by the owner of the rights deriving from the patent application or the patent shall have no effect in respect of the creditor carrying out the seizure.

**48.–**

Rights acquired by third parties in respect of a patent application shall maintain their effects in respect of the patent granted as a result of that application.

## **Part 6 Revocation of Patents**

**49.–**

1. A patent shall be revoked by the Court:

(1) if its subject matter falls within the application of Section 3 or 4 or does not comply with Sections 2, 5, 6 and 7;

(2) if it does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;

(3) if its subject matter extends beyond the content of the application as filed or, if the patent was granted on a divisional application, beyond the content of the earlier application as filed;

(4) if the owner of the patent is not entitled under Section 8.

2. If the grounds for revocation only affect the patent in part, revocation shall be pronounced in the form of a corresponding limitation of the patent. The limitation may be effected in the form of an amendment to the claims, the description or the drawings.

**50.–**

1. Revocation in whole or in part of a patent shall have retroactive effect as from the filing date of the patent application.

2. Notwithstanding the provisions on actions for damages caused by the fault or the bad faith of the owner of the patent or those on unwarranted enrichment, the retroactive effect of revocation of the patent shall not affect:

(1) decisions in infringement proceedings that have become final and have been executed prior to the revocation decision;

(2) contracts concluded prior to the revocation decision, insofar as they have been executed prior to the decision; however, restitution of the amounts paid under the contract, insofar as circumstances justify, may be claimed on grounds of equity.

**51.–**

1. If a patent is revoked, in whole or in part, by a judgment or a decision or by an arbitration award, the decision on revocation shall constitute a final decision in respect of all parties, subject to opposition by third parties.

Final revocation decisions shall be entered in the Register.

2. An appeal against the revocation of a patent shall have suspensory effect.

## Part 7

### The Protection of the Rights Conferred by Patents

#### 52.–

1. Any violation of the rights of the owner referred to in Section 27 shall constitute an infringement involving the infringer's liability. Good faith shall not exclude infringement.

When the subject matter of a patent is a process enabling a new product to be obtained, any identical product manufactured by a person other than the owner of the patent shall be considered to have been obtained by that process unless proved otherwise. When examining proof to the contrary, account shall be taken of the legitimate interest of the defendant in protecting his manufacturing or business secrets.

2. The owner or usufructuary of a patent shall be entitled to institute infringement proceedings.

However, the holder of a compulsory license granted under Section 31.1(1) may institute infringement proceedings if, after due notification, the owner or usufructuary of the patent does not institute such proceedings.

Unless otherwise stipulated in the licensing contract, the preceding subparagraph shall also apply to the holder of an exclusive license.

Any licensee shall be entitled to take part in the infringement proceedings instituted by the owner or usufructuary of the patent in order to obtain compensation for injury that he has personally sustained.

3. Infringement proceedings may not be instituted until the date on which the patent is made available to the public and solely in respect of infringements committed as from that date.

4. Notwithstanding Section 53, the Court shall order any infringer, at the request of the injured party:

(1) to cease the infringement;

(2) to pay the petitioner compensation for the damage caused by the infringement.

The Court may also order publication of the judgment.

#### 53.–

In the event of bad faith, the Court shall order the confiscation to the benefit of the petitioner of the articles manufactured in infringement of the patent and of the instruments and means specially intended for their manufacture. Where appropriate, the Court shall award an amount equal to the price of the articles already sold.

#### 54.–

Infringement proceedings shall be barred after five years as from the day on which the infringement was committed.

## Chapter III

### Representation Before the Office

#### 55.–

1. Notwithstanding paragraph 2, no person shall be compelled, in respect of patents, to be represented before the Office by a professional representative.

2. Natural or legal persons having neither a residence nor an effective place of business in Belgium must be represented, in respect of patents, before the Office by a professional representative and act through him, other than in filing a patent application when such filing is made by the applicant himself.

3. Notwithstanding Section 57.1, natural or legal persons having their residence or an effective place of business in Belgium may be represented before the Office, in respect of patents, by one of their employees; such employee need not be a professional representative but must be duly authorized. The King may lay down whether and under what conditions the employee of a legal person referred to in this paragraph may

also represent other legal persons having an effective place of business in Belgium and also having economic links with the said legal person.

4. Special provisions concerning representation of parties acting jointly may be laid down by the King.

**56.–**

1. Professional representation of natural or legal persons before the Office may only be undertaken, in respect of patents, by professional representatives.

2. Notwithstanding the Law of July 8, 1977, Approving Certain International Acts in Respect of Patents, this Chapter shall also apply to the filing of patent applications made in accordance with those international acts and in respect of all other acts relating to those applications or to patents granted as a result of such applications.

**57.–**

1. A professional representative may not act before the Office through one of his employees unless that employee is himself a professional representative.

When such professional representative is instructed to file a patent application, however, the record of filing may be signed by one of his employees holding due authorization if the filing is made in person.

2. For the purposes of this Chapter, payment of fees through a financial institution shall be deemed to constitute a direct payment by the person who has issued the payment order to that institution.

**58.–**

1. Any act carried out before the Office in breach of Sections 55 to 57 shall be automatically void. Irregularly paid fees shall be reimbursed subject to a reduction of one tenth.

**59.–**

There shall be kept at the Office a Register in which shall be entered the professional representatives entitled, in respect of the matters referred to in Section 56, to represent natural persons or legal entities before the Office.

The King shall lay down the entries that shall be shown in the Register of Professional Representatives and also the instructions for keeping the Register.

**60.–**

1. Only natural persons may be entered in the Register of Professional Representatives. They must satisfy the following conditions:

- (1) they must be Belgian and must be resident in Belgium;
- (2) they must be at least 25 years old;
- (3) they must not be prohibited or placed under guardianship;
- (4) they must neither be in a state of prohibition within the meaning of Sections 31 to 34 of the Penal Code nor have been convicted in Belgium or abroad of any of the offenses specified in Royal Decree No. 22 of October 24, 1934, prohibiting certain convicted persons and bankrupts from exercising certain offices, professions or activities and giving the commercial courts authority to pronounce on such prohibitions, as amended by the Laws of March 14, 1972, March 16, 1972, and August 4, 1978;
- (5) they must hold a Belgian diploma of university education or a Belgian diploma of higher education of the long type issued after at least four years of study in a scientific, technical or legal discipline.

Diplomas issued abroad after at least four years of study, in the same disciplines, shall be authorized subject to their equivalence having been recognized beforehand by the relevant Belgian authorities;

- (6) they must have exercised an activity in the field of patents for a period of time and subject to conditions laid down by the King;

- (7) they must have passed an examination before the Commission referred to in Section 61 on the subject of industrial property, principally as regards patents, within two years at the latest of terminating the activities referred to in item (6) of this paragraph.

2. Persons exempted as a result of an international convention or of a dispensation granted by the King on grounds of reciprocity shall not be required to satisfy the conditions of residence and nationality.

3. Any lawyer who is a member of the bar or who is authorized to exercise that profession in Belgium as a result of a law or of an international convention may, without being entered in the Register, act in the same way as a professional representative before the Office.

**61.–**

There shall be set up in the Ministry of Economic Affairs a Commission for the Approval of Representatives Entitled to Represent Natural Persons or Legal Entities before the Office in respect of the matter referred to in Section 56.

That Commission shall:

- (1) examine whether the persons wishing to be entered in the Register of Professional Representatives satisfy the conditions laid down in Section 60.1(1) to (6);
- (2) conduct the examination referred to in Section 60.1(7);
- (3) give its opinion to the Minister on the decisions he is required to take as regards entry in the Register of Professional Representatives or removal therefrom.

**62.–**

The Commission shall consist of two sections. One section shall do business in the Dutch language and the other shall do business in the French language.

The King shall lay down the composition and operation of the Commission and shall determine the terms of the examination referred to in Section 60.1(7). One member of the French section must be resident in the German-speaking linguistic area and possess an adequate knowledge of German.

The necessary credits shall be entered in the budget of the Ministry of Economic Affairs.

**63.–**

A request for entry in the Register of Professional Representatives shall be submitted to the Minister. He shall transmit it to the Commission for its opinion. The opinion shall be submitted to the Minister together with the file.

Where an applicant meets the requirements, the Minister shall have him entered in the Register of Professional Representatives within one month of receipt of the opinion. If the applicant does not meet those conditions, the Minister shall refuse the application within the same period. In both cases, the Minister shall inform the person concerned without delay.

Any decision in which the Minister departs from the opinion of the Commission and any decision in which he refuses an application shall be reasoned.

**64.–**

1. Notwithstanding Section 60, any natural person residing in Belgium or in a Member State of the European Communities who can prove that, prior to the date of entry into force of the present Section, he had acted in Belgium in an habitual and satisfactory manner for at least five years as an independent representative in the field of patents, as the person responsible for the patent department of an enterprise or as the qualified collaborator in the field of patents of one of the above-mentioned persons, may, at his request and following the opinion of the Commission under paragraph 3 of this Section, be entered by the Minister in the Register of Professional Representatives without having to meet entry conditions other than those laid down by Section 60.1(2) to (4).

Any natural person resident in Belgium or in a Member State of the European Communities who can prove that he has acted in a habitual and satisfactory manner abroad, prior to the date of entry into force of this Section, as,

- either an independent representative in the field of patents approved by the central industrial property service of a Member State of the European Communities,

- or as a responsible person in the patent department of an enterprise established in one of the Member States of those Communities,
- or the qualified collaborator in the field of patents of one of the above-mentioned persons,
- or a member, responsible for matters concerning patents, of an intergovernmental organism set up as a result of an international agreement to which Belgium is party,

may have up to a maximum of two years of such activity recognized as if it had been exercised in Belgium.

2. Notwithstanding Section 60, any natural person resident in Belgium or in a Member State of the European Communities who can prove that he was entered on the list of professional representatives before the European Patent Office on the date of entry into force of this Section may, at his request and following an opinion by the Commission referred to in paragraph 3 of this Section, be entered by the Minister in the Register of Professional Representatives without having to meet conditions other than to have been entered in the aforementioned list as a result of a request under Article 163(2) of the European Patent Convention and insofar as the request was accompanied by a certificate furnished by the relevant Belgian authority.

3. For the purposes of examining the request for entry in the Register of Professional Representatives filed under the preceding two paragraphs, there shall be set up for the duration of such examination a Commission at the Ministry of Economic Affairs.

The Commission shall consist of two sections. One section shall do business in the Dutch language and the other section shall do business in the French language.

The King shall lay down the composition and operation of the Commission. One member of the French section must be resident in the German-speaking linguistic area and possess adequate knowledge of German.

The necessary credits shall be entered in the budget of the Ministry of Economic Affairs.

4. The request for entry together with the relevant documents must be sent to the Minister by registered letter within three months at the latest of the date of entry into force of this Section.

The Minister shall transmit them to the Commission for its examination and opinion.

The opinion shall be submitted to the Minister together with the file.

Where the applicant satisfies the necessary conditions, the Minister shall have him entered in the Register of Professional Representatives within one month following receipt of the opinion. Where the applicant does not fulfill those conditions, the Minister shall refuse the application within that same period. In both cases, the Minister shall inform the person concerned without delay.

Any decision by which the Minister departs from the opinion of the Commission or by which he refuses an application shall be reasoned.

#### **65.–**

Any person entered in the Register of Professional Representatives may request the Minister that his name be removed from the Register.

#### **66.–**

The name shall be removed from the Register of Professional Representatives of any person who:

- (1) is deceased or subject to an incapacity under Section 69;
- (2) having been entered in the Register of Professional Representatives under Section 63, no longer fulfills the conditions required by Section 60.1(1) and (3) or may no longer rely on the provisions of an international convention or on reciprocity under paragraph 2 of that Section;
- (3) having been entered in the Register of Professional Representatives under Section 64.1, is no longer resident in Belgium or in a Member State of the European Communities or has been prohibited or placed under guardianship;
- (4) having been entered in the Register of Professional Representatives under Section 64.2, has been removed *ex officio* from the list of professional representatives before the European Patent Office for one of the reasons listed in Rule 102(2)(a) to (c) of the Implementing Regulations to the Convention on the Grant of European Patents or for having been subject to a disciplinary measure taken under Article 134(8)(c) of that Convention;
- (5) at the time of the request for entry or of a request for amendment of the entry, intentionally submitted documents or made declarations the content of which did not correspond to reality;

(6) has been convicted or has been subject to a prohibition referred to in Section 60.1(4);

(7) has committed a serious offense in the exercise of his patent representation activities before the Office.

The duration of removal under items (1) to (7) of this Section may not be less than one year.

**67.–**

Any professional representative whose entry has been removed may be re-entered, at his request, in the Register of Professional Representatives if the reasons that have led to his removal no longer apply, if the disciplinary measure under Section 66(4) is no longer of effect or if the term of removal under Section 66(5) and (7) has expired.

**68.–**

In the cases referred to in Section 66, except that of death, or when re-entry is requested on the basis of Section 67, the Minister shall obtain the prior opinion of the Approval Commission.

The latter shall inform the party concerned at least 20 days in advance, by registered letter, of the sitting at which the case is to be heard. The party concerned may be assisted or represented by a lawyer or by a professional representative.

The notification, together with the file, shall be transmitted to the Minister.

Decisions to remove or to refuse re-entry or decisions by which the Minister departs from the opinion of the Commission must be reasoned.

The Minister shall inform the person concerned without delay of his decision in respect of removal, re-entry or refusal of such entry. He shall have the removal or the re-entry, as appropriate, carried out within one month following receipt of the notification.

**69.–**

In the event of a professional representative dying or being prevented from carrying out his representation activities, the affairs that were entrusted to him before the Office may be taken over for a period of six months by another professional representative without the latter having to prove that he has been so empowered.

**70.–**

The Register of Professional Representatives shall be kept at the Office and shall be open for consultation by any interested party.

The list of professional representatives shall be published each year in the *Moniteur belge/Belgisch Staatsblad* and in the Collection.

Any change occurring during that year shall also be published therein.

## **Chapter IV**

### **Miscellaneous Provisions**

**71.–**

1. The King shall lay down the amount, the time limit and the form of payment for fees, additional fees and charges prescribed by this Law or in virtue thereof.

2. When the Office provides special services in respect of patents, the King may lay down a charge for which He shall determine the amount, the time limit and the form of payment. The amount of the additional charge may in no case exceed 5,000 francs.

3. For those persons resident in Belgium whose income does not suffice for them to be subject to taxation under Section 79 of the Income Tax Code, the King may provide for a reduction in the fees, additional fees and charges that He designates.

No reduction may be granted in respect of an invention that is obviously not patentable.

4. The King shall lay down the cases in which fees, additional fees and charges unduly paid shall be refunded in whole or in part.

**72.–**

Payment of fees and charges, other than the renewal fee, laid down by this Law or whose collection is authorized by this Law, shall be deemed valid if effected at the rate that is current on the day of payment.

Payment of the renewal fee shall only be deemed to be valid if effected at the rate that is current on the due date laid down in the second subparagraph of Section 40.1. In the event of the rate of that fee being amended and if the payment made before entry into force of the new rate is inadequate, payment shall only be deemed to have been validly effected if supplemented up to the amount required on the new date within a six-month period of grace as from that date. No additional charge shall be made in such case.

Except as otherwise provided by this Law or its implementing decrees, fees and charges that have been collected shall not be refunded.

**73.–**

1. The first instance courts shall have jurisdiction for claims relating to patents, whatever the value of the claim.

Any claim involving the infringement of a patent in conjunction with a matter of unfair competition shall be heard exclusively by the first instance court.

2. The court sitting at the headquarters of the Court of Appeal under whose jurisdiction the infringement or exploitation has taken place or, at the choice of the plaintiff, the court sitting at the headquarters of the Court of Appeal within whose jurisdiction the defendant or one of the defendants has his domicile or his residence shall have sole jurisdiction for claims in respect of patent infringement or of determination of the compensation referred to in Section 29.

3. Substantive petitions in respect of patents must be instituted before the court referred to in the preceding paragraph.

4. The court sitting at the headquarters of the Court of Appeal in whose jurisdiction the domicile or residence of the defendant or of one of the defendants is located shall have sole jurisdiction to hear:

- (1) petitions claiming ownership of a patent application or a patent;
- (2) petitions for the determination of reciprocal obligations in respect of compulsory patent licenses;
- (3) petitions for the annulment of a patent;
- (4) opposition to assignment contracts in respect of a patent application or of a patent;
- (5) opposition to assignment contracts in respect of a license to work an invention which is the subject matter of a patent application or of a patent and opposition in respect of assignment contracts for such license;
- (6) opposition in respect of patented inventions and of related know-how, referred to in Section 10 of the Law of January 10, 1955, when the conciliation provided for therein has failed.

5. When the defendant has no domicile or residence in Belgium, proceedings may be instituted before the court sitting at the headquarters of the Court of Appeal within whose jurisdiction the plaintiff has his domicile or residence.

6. Any agreement contrary to the provisions of the preceding paragraphs shall be null and void.

This Section shall not, however, preclude opposition in respect of the ownership of a patent application or of a patent, the validity or the infringing of a patent or the determination of the compensation referred to in Section 29 or in respect of patent licenses other than compulsory licenses submitted to arbitration tribunals.

**74.–**

The clerks of the courts or tribunals that have reached a decision or a judgment on the basis of this Law shall communicate without cost to the Office within one month of the verdict a copy of the decision or of the judgment. The same obligation shall be placed upon the arbitration tribunals.

**75.–**

1. The word “patents” shall be deleted in Section 6 of the Law of December 30, 1925, Amending the Laws on Patents for Inventions, Trademarks, Industrial Designs and Industrial Property in General, as amended by the Law of July 23, 1932, Royal Decree No. 85 of November 17, 1939, and the Law of June 26, 1978.

2. The words “and patents for inventions” shall be deleted in Section 569.1(7) of the Judicial Code.

3. The words “patents for inventions” shall be deleted in Section 627(5) of the said Code.

4. Section 1488 of the said Code shall be supplemented by the following provision:

5. The words “Industrial and Commercial Property Service” shall be replaced by the words “Industrial Property Office” in Section 2.1 of the Law of July 8, 1977, adopting various international instruments.

**76.–**

The following shall be repealed:

(1) the Law of May 24, 1854, on Patents for Inventions, amended by the Laws of March 27, 1857, October 24, 1919, August 3, 1924, and December 30, 1924, Royal Decree of June 30, 1933, Royal Decree No. 85 of November 17, 1939, and the Laws of June 1, 1964, October 10, 1967, and June 26, 1978;

(2) Section 17 of the Law of October 11, 1919, regulating certain matters of industrial property;

(3) the Law of July 15, 1957, facilitating the filing of applications for patents, trademarks and industrial designs on the occasion of official or officially recognized international exhibitions held in Belgium, as amended by the Law of June 30, 1969;

(4) the Law of August 9, 1978, setting up a Register of Professional Patent Representatives.

**77.–**

1. Patent applications filed prior to the entry into force of this Law shall be dealt with in accordance with the provisions that were applicable at the time of filing.

2. This Law shall apply immediately to patents granted prior to its entry into force, whereby acquired rights existing at the time of entry into force of this Law shall be maintained.

3. Sections 40, 41 and 72 shall apply to patents applied for or granted prior to the entry into force of this Law.

The King shall lay down the rate, time limit and method of collection of the renewal fees due for maintaining the patent applications and patents referred to in the first subparagraph.

**78.–**

Except for Sections 59 and 64, the date of entry into force of the Sections of this Law shall be determined by the King. Such date may not be later than the expiry of a period of 24 months as from publication of this Law in the *Moniteur belge/Belgisch Staatsblad*.